United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-1599

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ZVONKO BUSIC, JULIENNE BUSIC,
PETAR MATANIC, FRANJO PESUT,
and MARC VLASIC,

Defendants-Appellants.

On Appeal From the Order of the
United States District Court
for the Eastern District of New York
Denying Defendants-Appellants'
Motions for Release Pending Appeal and Trial

Docket No.

ZVONKO BUSIC, JULIENNE BUSIC,
PETAR MATANIC, FRANJO PESUT,
and MARC VLASIC,

Petitioners,

v.

HONORABLE JOHN R. BARTELS,
United States District Judge
for the Eastern District of New York,

Respondent.

UNITED STATES COURT OF APPEALS
FILED
JAN 4 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

Petition for Writ of Mandamus

JOINT APPENDIX

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EMPIRE
F# 763,251

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

-against-

ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC,

Defendants.

- - - - - - - - - - - - - - - - - - X

Bartels J

INDICTMENT

Cr. No. 76CR662
(T. 49, U.S.C. §1472(i);
T. 18, U.S.C. §§371, 2)

9-21-76

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 10th and 11th days of September, 1976, within the Eastern District of New York and elsewhere, the defendants, ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC, attempted to commit and did commit air piracy as defined in 49 United States Code, Section 1472(i)(2), in that the defendants, ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC, by threat of force and violence and with wrongful intent did attempt to and did seize and exercise control of an aircraft within the special aircraft jurisdiction of the United States, to wit: a Boeing 727 known as Trans World Airlines Flight 355 bound from LaGuardia Airport, Queens, New York and enroute to O'Hare Airport, Chicago, Illinois, the commission of which offense resulted in the death of New York City Police Officer Brian Murray. (Title 49, United States Code, Section 1472(i); Title 18, United States Code, Section 2).

COUNT TWO

On or about the 10th and 11th days of September, 1976, within the Eastern District of New York and elsewhere, the defendants, ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC, attempted to commit and did

commit air piracy as defined in 49 United States Code, Section 1472(i)(2), in that the defendants, IVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC, by threat of force and violence and with wrongful intent did attempt to and did seize and exercise control of an aircraft within the special aircraft jurisdiction of the United States, to wit; a Boeing 727 known as Trans World Airlines Flight 355 bound from LaGuardia Airport, Queens, New York and enroute to O'Hare Airport, Chicago, Illinois. (Title 49, United States Code, Section 1472(i); Title 18, United States Code, Section 2).

COUNT THREE

On or about and between the 6th day of September, 1976, and the 11th day of September, 1976, both dates being approximate and inclusive, within the Eastern District of New York, the defendants IVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC did knowingly and wilfully conspire to commit an offense against the United States, in violation of Title 49 Section 1472(i), United States Code, by conspiring to commit air piracy as defined in 49 United States Code, Section 1472(i)(2) by threat of force and violence and with wrongful intent by seizing and exercising control of an aircraft within the special aircraft jurisdiction of the United States. (Title 18, United States Code, Section 371).

In furtherance of said unlawful conspiracy the defendants IVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC committed the following overt acts:

OVERT ACTS

1. On or about the 10th day of September, 1976, within the Eastern District of New York the defendants IVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC boarded a Boeing 727 known as Trans World Airlines Flight 355 at LaGuardia Airport, Queens, New York.

2. On or about the 10th day of September, 1976, on board Trans World Airlines Flight 355 shortly after said flight left LaGuardia Airport, Queens, New York, defendant IVANKO BUSIC handed a letter to flight steward Thomas Van Dorn which stated:

"1. This airplane is hijacked.
2. We are in possession of five gelignite bombs, four of which are set in cast-iron pans, giving them the same kind of force as a giant grenade.
3. In addition, we have left the same type of bomb in a locker across from the Commodore hotel on 42nd St. To find the locker, take the subway entrance by the Bowery Savings Bank. After passing through the token booth, there are three windows belonging to the bank. To the left of these windows are the lockers. The number of the locker is 5713.
4. Further instructions are contained in a letter inside this locker. The bomb can only be activated by pressing the switch to which it is attached; but caution is suggested.
5. The appropriate authorities should be notified from the plane immediately.
6. This plane will ultimately be heading in the direction of London, England."

3. On or about the 10th day of September, 1976, on board Trans World Airlines Flight 355 shortly after said flight left LaGuardia Airport, Queens, New York, the defendants FRANS PEGUT and MARK VLASIC exhibited metal devices to the passengers and crew of Trans World Airlines Flight 355 and indicated said metal devices were bombs.

4. A bomb was placed in a subway station locker in the vicinity of 42nd Street and Lexington Avenue.

5. On or about the 6th day of September, 1976, a Trans World Airlines ticket was purchased at LaGuardia Airport, Queens, New York in the name of S. Radic.

A TRUE BILL.

FOREMAN

DAVID G. TRAGER
United States Attorney
Eastern District of New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that, upon the annexed Affidavits and Memorandum of Points and Authorities in Support of Motion for Reduction of Bail, and upon all papers and proceedings heretofore had herein, the undersigned will move this Court before the Honorable John R. Bartels in Courtroom 4 of the United States Courthouse, Brooklyn, New York, on the 8th day of November, 1976, at 9:30 o'clock in the morning of that day, or as soon as possible thereafter as counsel can be heard, for an order pursuant to Rule 46 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3146 reducing the bail of Zvonko Busic.

Dated: Washington, D.C.
October 27, 1976

Respectfully submitted,

Michael E. Tigar

WILLIAMS, CONNOLLY & CALIFANO
1000 Hill Building
Washington, D.C. 20006
(202) 331-5000

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OF COUNSEL:

Edward Bennett Williams, Esquire
Richard M. Cooper, Esquire
Pierce O'Donnell, Esquire

TO: David G. Trager, Esquire
United States Attorney
Eastern District of New York

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT IN SUPPORT OF MOTION FOR REDUCTION OF BAIL

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

ANTHONY BARULICH, being duly sworn, deposes and says:

1. I reside in Astoria, New York. I have studied jurisprudence for six semesters at the University of Zagreb. I escaped from Croatia and lived in a refugee camp in Italy from 1954 to 1956. On May 23, 1956, I came to the United States under the Refugee Act.

2. After receiving training with Banker's Trust in computers, I worked for Shell Oil Company for eight years. For the past five years I have been employed as a computer programmer for American International Group.

3. I am the president of the Croatian Radio Club and have been a commentator for the past two or three years.

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4. I met Zvonko Busic two years ago in connection with the Croatian Radio Club. He has assisted us with our programming. I also saw Zvonko Busic once a week at the Croatian Center. Zvonko and his wife Julienne have visited my apartment a few times. I know Julienne and Zvonko Busic to be extremely honest, reliable people.

5. I have known Petar Matanic for at least five years. We would talk once a week by telephone or at the Croatian Center or at soccer games. I would also see him at the Croatian Catholic Church.

6. I do not believe that Zvonko and Julienne Busic or Petar Matanic are violent persons. In my opinion, they would not endanger the community if they were released pending trial. I have no doubts that, if released, they would make court appearances as required. I know that they are aware of their responsibilities if released and are prepared to face them.

7. I am willing to serve as a third-party custodian for any one or more of the defendants. I am aware that I might be asked to perform supervision and reporting functions.

Anthony Barulich

Anthony Barulich

Sworn to before me
this 26 day of
October, 1976.

Theodore A. Gronroos
Notary Public

THEODORE A. GRONROOS
Notary Public, State of New York
No. 03-6680000
Qualified in Bronx County
Commission Expires March 30, 1978

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT IN SUPPORT OF MOTION FOR REDUCTION OF BAIL

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

ZVONKO CRNOGORAC, being duly sworn, deposes and says:

1. I am a resident of Laurelton, New York. I am a native of Croatia and emigrated to the United States from Austria in August 1969.

2. In this country I have been employed as an electrician and am a union carpenter. I have been unemployed for the past five months because of the depressed construction industry in New York State.

3. I met Zvonko Busic in 1959 or 1960 at the gymnasium in Imotski, Croatia. I saw him again later in Austria, and we were together for about five months. We were reunited in the United States when I visited him in Cleveland, Ohio, for three days in 1970. We keep in close contact by telephone. When

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Zvonko and Julienne Busic moved to New York in 1975, I visited them regularly.

4. I met Petar Matanic in 1969 when he arrived in this country. We started working together as carpenters in 1970 and have always been on the same job since that time. There was hardly a workday that we did not see each other. Petar Matanic was a faithful visitor at the Croatian Center.

5 I know my friend Petar Matanic is a very truthful person. He believes in the power of the truth.

6. I met Franjo Pesut six months ago at the Croatian Center. He is a quiet, nonassertive man. I used to see him about three times a month at the Croatian Center, church activities, or soccer games.

7. I met Marc Vlasic in Zagreb, Croatia in 1967. I saw him again in New York at church and soccer club functions. I would see him three or four times a month.

8. I am willing to assume the responsibility of third-party custodian for one or more of the defendants. I am aware that this duty might entail reporting and supervision requirements.

Zvonko Crnogorac

Zvonko Crnogorac

Sworn to before me
this 26 day of
October, 1976.

Theodore A. Gronefoos

Notary Public

THEODORE A. GRONEFOOS
Notary Public, State of New York
No. 03-6680000
Qualified in Bronx County
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT IN SUPPORT OF MOTION FOR REDUCTION OF BAIL

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

MLADEN CUVALO, being duly sworn, deposes and says:

1. I am pastor of Sts. Cyril and Methodius and St. Raphael's Roman Catholic Church at 41st Street and Tenth Avenue in New York City. I was ordained on July 10, 1966, and have lived in the United States since March 16, 1967. I am a native of Croatia.

2. Our church has 25,000 individual parishioners and 5,500 family units. Our parishioners are drawn from the entire New York metropolitan area. Adjacent to our church, we have a Croatian Center, which is a focal point for the Croatian community in New York.

3. I know well each of the defendants in this case. As pastor I would see each of them at least once a week. Marc

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Vlasic and Petar Matanic have been members of our church for at least the past six years. Petar Matanic is a member of our soccer team and played for us every Sunday in the German-American League. Petar Matanic had been a carpenter for a construction firm in Long Island but, because of a slowdown in the industry, he has been laid off for the past several months.

4. Marc Vlasic is a member of the Croatian Sports Club and a frequent fan of our soccer games. He was a union electrician.

5. I have known Zvonko and Julienne Busic for at least the past seven years. I first met them in New York when they were visiting from Cleveland. One of my assistants performed a church marriage ceremony for them six months ago.

6. From my many discussions with him after Mass, at the Croatian Center, and at soccer games, I know Zvonko Busic to be extremely reliable.

7. I know all these defendants to be very honest, serious persons. They are nonviolent.

8. I have no doubts that, if they are released pending trial, the defendants will regularly and faithfully appear in court at all times when their presence is required. They are proud persons, and I know from speaking with them that they would do nothing to bring shame on themselves and their fellow Croatians by not honoring the trust placed in them by their release pending trial.

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9. I am confident that the defendants' ties to the community, as well as the willingness of hundreds of their friends to assist them, will assure that they will respond honorably if they are released pending trial.

10. My colleagues and I have contacted numerous members of the community to make suitable living and third-party custody arrangements for the defendants.

(a) The following persons have indicated that they will provide living accommodations and act as third-party custodians for the defendants:

1. Josip Cindric
   2601 Foxdale Ave.
   Oceanside, N.Y. 11572
   (516) 536-0453

2. Josip Knezevic
   4342 Colden St.
   Flushing, N.Y. 11355
   (212) 353-0069

3. Miljenko Pinjusic
   432 9th Street
   Fairview, N.J. 07022
   (201) 941-1456

4. Ivan Jukic
   154-11 12th Road
   Whiston, N.Y.
   (212) 767-3355

5. Steve Basic
   636 Martin Ave.
   Oradell, N.J. 07649
   (201) 265-7389

6. Ante Ukalovic
   51-52 73rd Street
   Maspeth, N.Y. 11378

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(b) The following person has indicated that he will provide suitable living accommodations for the defendants:

Dr. Peter Petrov
314 E. Tremont Ave.
Bronx, N.Y. 10457
office: (212) 982-9800

(c) The following persons have indicated that they will serve as third-party custodians of the defendants:

1. Zvonko Crnogorac
234-14 133rd Ave.
Laurelton, N.Y. 11422
(212) 276-8260

2. Marijan Gabelica
32-45 42nd Street
Astoria, N.Y. 11103
(212) 932-9774

3. Zdravka Logarusic
32-45 42nd Street
Astoria, N.Y. 11103
(212) 932-9774

4. Anthony Barulich
30-36 34th Street
Astoria, N.Y. 11103
(212) 721-9290
office: (212) 791-7250

11. I know each of the persons listed above as responsible, reliable and well-respected members of the community. In addition to providing housing and/or serving as third-party custodian, each person listed above is willing to cooperate with the Court in any system for reporting the continued compliance of the defendants with any release conditions imposed by the Court.

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They are fully aware of the importance of the responsibilities which they might be asked to assume.

F. Mladen Cuvalo

Mladen Cuvaio

Sworn to before me
this 26 day of
October, 1976.

Theodore A. Gronros

Notary Public

THEODORE A. GRONROOS
Notary Public, State of New York
No. 03-6680000
Qualified in Bronx County
Commission Expires March 30, 19[illegible]

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT IN SUPPORT OF MOTION FOR REDUCTION OF BAIL

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

MARIJAN GABELICA, being duly sworn, deposes and says:

1. I live at 32-45 42nd Street, Astoria, New York. I work as a waiter at Les Pleades restaurant at 20 East 76th Street in New York City. I have lived in the United States since December 4, 1965.

2. I have known the defendants Zvonko and Julienne Busic for at least six years. I met them at a Croatian picnic in Astoria. Thereafter, I would frequently see them at the Croatian Center and at Sts. Cyril and Methodius and St. Raphael's Church at 41st Street and Tenth Avenue in New York City. I consider myself a friend of both Zvonko and Julienne Busic.

3. I know Zvonko and Julienne Busic to be honest, trustworthy people. Whenever I would lend Zvonko money he would

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always repay it promptly. Whenever I would lend Julienne books, she would never fail to return them. In all my contacts with Zvonko and Julienne, they would always keep their promises. I also know that they are opposed to violence.

4. I have known Petar Matanic for at least five years. He plays on the Croatian soccer team and is a member of the Croatian Soccer Club. About once a week I would speak with Petar Matanic at the Croatian Center. He has visited my home about ten times. He would always promptly return Croatian history books that he borrowed from me. Petar Matanic has been employed as a construction worker. He is well-respected within the Croatian community. He is dedicated to his family and has always hoped to be able to send money to them in Croatia. I know that he is opposed to violence.

5. I have known Marc Vlasic since 1971 when he came to the United States. I tried to help him find a job. I saw him at the Croatian Center almost every week. He is a member of the Croatian Soccer Club.

6. I do not know personally Franjo Pesut. I have no doubts that the other four defendants will keep their promise to appear in court if they are released.

7. I am willing to assist the Court in any way to effect the release of the defendants on such conditions as the Court may prescribe. I would be honored to serve as a

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third-party custodian and to comply with any reporting and supervision requirements.

Marijan Gabelica

Marijan Gabelica

Sworn to before me
this 26 day of
October, 1976.

Theodore A. Gronroos

Notary Public

THEODORE A. GRONROOS
Notary Public, State of New York
No. 03-6680000
Qualified in Bronx County
Commission Expires March 30, 1975

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT IN SUPPORT OF MOTION FOR REDUCTION OF BAIL

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

STJEPAN GALIC, being duly sworn, deposes and says:

1. I am the sole owner of the A La Chandelle restaurant at 93rd Street and Lexington Avenue in New York City. I have owned the restaurant for over three years. I am a native of Croatia but fled to France where I lived for a year and a half. I came to the United States as a refugee in August 1968. I settled in New York and began working as a busboy.

2. I met Zvonko and Julienne Busic when they moved to New York City in 1975. On the average, I would see Zvonko Busic two or three times a week. Most of my contacts with Zvonko and Julienne Busic were in my restaurant, but I would sometimes see them at the Croatian Center. They have been guests in my home.

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3. Both Zvonko and Julienne Busic visited my restaurant to talk, to have dinner, or to work. They were always willing to assist me when I needed them. They are very reliable. Most of the time they worked for me out of friendship and not for money. Occasionally I would be able to prevail upon them to accept a small amount of money for their work. I value Zvonko as a close, trusted friend. I am confident that Zvonko and Julienne Busic do not believe in violence.

4. I have known Petar Matanic since he came to the United States seven or eight years ago. He would periodically patronize my restaurant. I would also see him at the soccer games, at my brother's restaurant, and at the Croatian Center. I have a great deal of respect for Petar Matanic. He is known to be an honest, kind and generous man. I do not believe that he is a violent person.

5. If the Court should release Zvonko Busic pending trial, I would be pleased to accept third-party custody of him and to offer him employment in my restaurant. I would also be willing to cooperate with any reporting and supervision requirements established by the Court. I have no doubts that Zvonko Busic would appear in court as required.

Stjepan Galic

Sworn to before me
this 26 day of
October, 1976.

Notary Public

THEODORE A. GRONROOS
Notary Public, State of New York
No. 03-6680000
Qualified in Bronx County
Commission Expires March 30, 1978

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT IN SUPPORT OF MOTION FOR REDUCTION OF BAIL

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

ANTE GOJCETA, being duly sworn, deposes and says:

1. I am a resident of New York City. I am a native of Croatia and moved to Paris in 1966. I emigrated to the United States in May 1969 and have lived in New York City since my arrival.

2. I am employed as a waiter in the Roman Cave restaurant. I have been attending classes at Hunter College since 1971.

3. I know all of the defendants except Franjo Pesut. I met Zvonko Busic at the Croatian Center and have known him for six months. He enjoys an excellent reputation as an extremely honest, reliable, dedicated and moral man.

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3. I also know Julienne Busic and believe her to be a serious, reliable, and intelligent woman.

4. I have known Petar Matanic since November 20, 1969, when he came to this country. I met him upon his arrival when he was being housed at the Wolcot Hotel by the United States Catholic Conference.

5. I have frequently seen Petar Matanic at restaurants and clubs and at church functions. Petar Matanic is well respected among Croatians in the New York area. His friends consider him a very honest, responsible, and reliable man. He is nonviolent. He has worked as a construction worker for about six years.

6. I met Marc Vlasic in Paris in 1968 at a school where we were learning French. Marc Vlasic worked hard to put himself through school and was well-respected by his friends.

7. After Marc Vlasic's arrival in this country, we became even closer friends. We have visited each other's homes and have seen each other at various church functions.

8. Marc Vlasic is an honest, dedicated, unselfish man. I can say without reservation that he is the finest Croatian I have ever met.

9. From personal experiences and from what numerous members of the community have told me, I believe that none of the defendants are violent.

Ante Gojceta

Sworn to before me
this 26 day of
October, 1976.

Notary Public

THEODORE A. GRONROOS
Notary Public, State of New York
No. 03-6680000
Qualified in Bronx County
Commission Expires March 30, 19 75

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT IN SUPPORT OF MOTION FOR REDUCTION OF BAIL

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

STEVEN IVKOSIC, being duly sworn, deposes and says:

1. I am a self-employed house painter and own a food concession stand in Elmsford, New York. I am a native of Croatia and fled to France in 1964. I came to the United States as an immigrant in 1966 and have lived in New York State since that time, except for four months when I lived in San Francisco in 1968.

2. I have known Marc Vlasic since he first came to the United States. I met him through the Croatian Catholic Church. For two years he lived in my neighborhood. We have worked together as painters since 1976. We attend the same church and frequently go together to sporting and social events.

3. Marc Vlasic is a very honest, reliable man. Whenever he was called upon to perform a service for an

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organization or a friend, he could be counted upon to carry out his responsibilities.

4. I also know Julienne and Zvonko Busic. I met them two years ago at the Croatian Catholic Church. We would occasionally visit each other's homes.

5. Julienne and Zvonko Busic are honest, reliable people, and I would trust them with anything. I have no doubt that they would honor the conditions of their release pending trial.

6. I met Franjo Pesut seven or eight months ago. He has a reputation for being honest, reliable, and a good worker. I periodically have seen him at the Croatian Catholic Church and at the Croatian Soccer Club.

7. I have known Petar Matanic for at least six years. We played together at one time on the Croatian soccer team. In the recent past, I have seen him at least once a week at church and soccer club functions. He has also visited me at my concession stand. I have no doubts about his honesty, reliability, and trustworthiness.

8. I do not believe that any of the defendants are violent or that they would pose a threat to the community if released pending trial.

Steven Ivkosic

Sworn to before me
this 20 day of
October, 1976.

Theodore A. Gronroos
Notary Public

THEODORE A. GRONROOS
Notary Public, State of New York
No. 03-6680000
Qualified in Bronx County
Commission Expires March 30, 19 75

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATONIC, FRANJO PESUT and MARC VLASSIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT IN SUPPORT OF MOTION FOR REDUCTION OF BAIL

CITY OF NEW YORK)
) ss.:
STATE OF NEW YORK)

ZDRAVKA LOGARUSIC, being duly sworn, deposes and says:

1. I am the sister of the defendant Zvonko Busic. I have come to New York City to assist my brother in connection with his defense.

2. I received my grammar school education in our village of Gorica, Croatia. I attended the gymnasium in Split for four years and studied economics and commerce.

3. I came to the United States from Vienna, Austria on September 16, 1970 and went directly to Cleveland, Ohio. On July 24, 1971 I married a Croatian from Cleveland and have lived there since my arrival in the United States.

4. My brother Zvonko Busic left Croatia in May 1967. After working, traveling and studying in West Germany and Austria,

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he came to the United States in December 1969 and settled in Cleveland, where he had Croatian friends. He worked in factories until 1971 when he was laid off because of a lack of work. During this period he lived with us at our home in Cleveland. He was always a diligent student, and after he came to this country he worked hard to master the English language.

5. After his return from Europe in 1972, Zvonko Busic lived with my husband and me for one month in Cleveland. He and his wife Julienne then found jobs in Cleveland and moved into an apartment house where they were the superintendents. They left Cleveland in the spring of 1973 and went to Portland, Oregon, so that Julienne could finish her college education.

6. While living in Portland, both Julienne and Zvonko worked, she as a part-time waitress and he as a hotel waiter.

7. When Julienne received her college degree in the spring of 1975, they moved to New York City. They took an apartment at 303 West 76th Street. Zvonko worked as an elevator operator in an apartment building, and Julienne taught English as a second language in a private school for adults.

8. I have known Marc Vlassic since we were children in our native Croatia. He comes from a very well-respected family.

9. I met Franjo Pesut in Cleveland in 1973 at a Croatian party. He is a quiet, decent man.

10. Neither my brother Zvonko nor his wife Julienne are violent persons. I sincerely believe that they would not

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pose a danger to the community if released pending trial. From what I know of the other defendants from personal experience and from what others in the community have repeatedly told me, I also have no doubts that they would not present a threat to the safety and welfare of the community.

11. From speaking with my brother Zvonko, I have no doubts whatsoever that he, his wife Julienne, and the other defendants, if released, will attend court as required. I know that they want a full, fair and open trial of all charges against them.

12. I am willing to assist the Court in any way possible in assuring the presence of my brother Zvonko Busic at trial. In particular, I will accept third-party custody of him and comply with any supervision and reporting requirements imposed by the Court.

Zdravka Logarusic

Sworn to before me
this day of
October, 1976.

Notary Public

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT IN SUPPORT OF MOTION FOR REDUCTION OF BAIL

CITY OF WASHINGTON)
) ss.:
DISTRICT OF COLUMBIA)

MICHAEL E. TIGAR, being duly sworn, deposes and says:

1. I am a member of the bar of the District of Columbia and am one of the attorneys defending Zvonko Busic.

2. I make this affidavit in support of a Motion for Reduction of Bail pursuant to Rule 46 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3146.

3. Zvonko Busic, Julienne Busic, Petar Matanic, Franjo Pesut, and Marc Vlasic were indicted in 76 Cr. 602 on September 21, 1976. The indictment charges violations of 49 U.S.C. § 1472(i)(2) and 18 U.S.C. § 2 (air piracy, the commission of which resulted in a death, and attempt to commit air piracy); 49 U.S.C. § 1472(i)(2) (air piracy and attempt to

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commit air piracy); and 18 U.S.C. § 371 (conspiracy to commit air piracy).

4. Bail has been set for each defendant in the amount of One Million Dollars ($1,000,000).

5. The remainder of this affidavit represents the information obtained by counsel from recent interviews with friends and business associates of the defendants.

6. Zvonko Busic was born on January 23, 1946, in Gorica, Croatia. His father is a farmer, and his mother works on the farm. Zvonko Busic is the third oldest of six children. His brother Ante is an engineer in Zagreb, Yugoslavia; his brother Ivan is a farmer in Gorica; his brother Stipe is a ship technician in Hamburg, West Germany; his sister Zdravka Logarusic is married and lives in Cleveland, Ohio; and his sister Marija is a student in Zagreb.

7. Zvonko Busic received his early education in Gorica. In 1965 he attended the Philosophical University of Zagreb and studied literature and history. He was active in promoting the preservation of the Croatian language. He refused to join the Yugoslavian Communist Party.

8. Fearing arrest on account of his peaceful political activities, Zvonko Busic left Zagreb in 1967 and worked in his uncle's clothing store in West Germany for 14 months.

9. In the fall of 1968, Zvonko Busic registered at the University of Vienna and studied literature, history, philosophy

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and Slavic languages. While a student in Vienna, he met his wife, Julienne Eden Schultz Busic, an American who was tutoring in English.

10. In December 1969 Zvonko Busic came to the United States on a Yugoslavian passport as an immigrant. He emigrated to this country because it promised to be a good place to finish his education and to settle; there were many Croatians in this country, including several of his good friends; and Zvonko Busic felt that Austria was not safe because of the deaths of several Croatians. Zvonko is now a permanent resident in this country.

11. Upon arrival in the United States, Zvonko Busic went directly to Cleveland, Ohio, to stay with Branko Coric, a friend who helped him come to this country. Within a week, Zvonko Busic obtained employment in a factory as a helper for a machine operator and a trash remover. He worked there for four months. After a one-week lay-off, he found a job doing cleaning and maintenance at a copper factory and worked there steadily until April 1971, when he was laid off.

12. Wishing to finish his studies and to travel, Zvonko Busic returned to Europe. He met Julienne again, and they were married in Frankfurt, Germany, in May 1972.

13. In August 1972 Zvonko and Julienne Busic returned to Cleveland and lived there until May 1973. Zvonko Busic was steadily employed as a building superintendent, first at the Marina Towers and then at the Plymouth Park.

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14. In May 1973 Zvonko and Julienne Busic moved to Gearhart, Oregon, looking for employment. They moved to Portland, Oregon, in September 1973 when Julienne resumed her full-time studies in German and teaching English as a second language at the University of Oregon. Zvonko Busic was steadily employed from September 1973 to March 1975 as a waiter, first at the Benson Hotel and then at the Hilton Hotel.

15. Following Julienne's graduation from college, they moved to New York City because employment prospects were brighter there and a number of friends lived in the New York area.

16. After living temporarily in Jersey City for a month, Zvonko and Julienne Busic moved to an apartment at 303 West 76th Street in New York City. They paid $180 rent per month. Zvonko Busic frequently helped the owner with repairs around the building.

17. From March 1975 to March 1976 Zvonko Busic worked steadily as an elevator operator at 7 West 96th Street for a weekly net salary of $143. He lost his job when economy measures were taken by the building's owners. The superintendent of the building is Milan Vojvodic.

18. Zvonko and Julienne Busic regularly attended services at the Roman Catholic Church of Sts. Cyril and Methodius and St. Raphael at 41st Street and Tenth Avenue in New York City. They also attended regular social and other activities at the Croatian Center adjacent to the Church.

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19. Zvonko Busic has had two minor prior involvements with the law.

(a) In March 1971 he was arrested in Cleveland in connection with an altercation among Croatians and others. He was released on bail of $200. He attended two court appearances as required. The charges were dismissed, and the bail was returned.

(b) In June 1971 he was attacked and hit on the head as he entered a Cleveland bar. At the time of this unprovoked assault, he was carrying a gun because he worked at night and had to travel through a crime-ridden neighborhood. He was charged with possession of an illegal weapon and disorderly conduct. He posted bail of $200. He made three court appearances as required. After the payment of a fine or court costs, approximately $140 of his bail was returned to him.

20. As a result of his recent arrest in this case and the seizure of most of his personal effects at his apartment, Zvonko Busic no longer possesses his "green card" or any other documents which would enable him to travel abroad.

21. If released from custody, Zvonko Busic can be employed at several places in New York City. Joseph Remenar, a publisher at 101 Fifth Avenue, has stated that he will give him employment and will cooperate in any reporting requirements imposed by the Court. Likewise, Stjepan Galic, owner of the A La Chandelle Restaurant at Lexington Ave. and 93rd Streets, has

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offered to give Zvonko Busic full-time employment and to participate in any supervision program established as a condition of his release.

22. Zvonko Busic and the other defendants enjoy good reputations for honesty, reliability and nonviolence among friends and acquaintances and leaders of the Croatian community in New York. In addition to information contained in other affidavits submitted in support of the Motion for Reduction of Bail, the following information has been communicated to counsel:

(a) Father Slavko Soldo, a priest at Sts. Cyril and Methodius and St. Raphael's Church, has known for a year all of the defendants except Franjo Pesut. They are his parishioners and frequent visitors to the Croatian Center. Father Soldo indicates that Zvonko Busic is well known in the Croatian community as a quiet, good man who has never been in trouble in New York. Father Soldo knows Zvonko Busic, Julienne Busic, Marc Vlasic and Petar Matanic to be nonviolent. He has no doubts that they would faithfully appear in court as required.

(b) Bogdan Raditsa, Professor Emeritus of Modern European History at Fairleigh-Dickinson University in Teaneck, New Jersey, emigrated to the United States from Yugoslavia in 1946. He met Zvonko and Julienne Busic at the Croatian Catholic Church. He believes that they are serious, responsible, and honest persons. He has no doubts that they would appear in court as required if released pending trial.

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(c) Nada Pusic came to the United States from Munich, Germany, in 1950. Until her retirement two years ago, she worked at a book bindery in New York City. She believes the defendants are sincere, honest persons who would not do anything to betray the trust placed in them if they were released pending trial.

(d) Krunoslav Masina escaped from Croatia in 1958, and after five years in Paris, he came to the United States in 1963. He is active as an announcer and commentator on the Croatian radio station in New York City. He knows Petar Matanic and considers him a close friend. Petar Matanic is very honest and reliable and does not believe in violence. He also knows Zvonko Busic through the radio station; he is a reliable man. Krunoslav Masina firmly believes that, if released pending trial, Zvonko Busic and Petar Matanic would regularly and faithfully appear at all times when their presence was required.

(e) Vice Loncar has lived in New York since he came to the United States from Croatia eleven years ago. He has known Julienne and Zvonko Busic since they moved to New York in 1975. They regularly attend Mass at the Croatian Catholic Church. He regards them as honest and reliable. Petar Matanic is one of his closest friends; he has known him for six years. He has never met anyone as honest as Petar Matanic. All five defendants, in Vice Loncar's opinion, are nonviolent and would not pose a threat to the community if released pending trial.

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(f) Milan Vojvodic came to the United States in 1961. After successive employment as an elevator operator, porter, doorman, and handyman, he became superintendent at 7 West 96th Street in New York City, the co-operative apartment building where Zvonko Busic was employed as an elevator operator. Zvonko Busic was hired for the job on the recommendation of Father Mladen Cuvalo, pastor of the Croatian Catholic Church, and with the approval of the co-operative's Board of Directors. Zvonko Busic was laid off in March 1976. According to Milan Vojvodic, Zvonko Busic was a trusted, reliable and good worker. He was popular among the tenants. Milan Vojvodic has no doubts that Zvonko Busic would regularly and faithfully attend all court proceedings as required if he were released pending trial. Milan Vojvodic believes that Zvonko Busic is determined not to do anything pending trial that would discredit himself, the other defendants or his fellow Croatians.

23. I have reviewed the contents of an affidavit of Robert Tanenbaum, of the New York County District Attorney's Office, revealing that an interpreter acting for defendant Pesut has been furnishing information to the government. The discovery of this government agent within the defense camp has caused grave concern among the defendants and among members of the Croatian community. It will be almost impossible for counsel,

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non-Croatians, to inspire the confidence in members of the Croatian community which is necessary to conduct a thorough investigation of the defendants and their background and standing in the community; this investigation will be necessary to prepare character evidence for use at trial. It may also be that members of the Croatian community will be able to shed light upon the defendants' intent; for this investigation, it is necessary to have the confidence of such persons. It now appears that the only way in which counsel will be able to interview these witnesses with any hope of success is in the presence of one or more defendants. For this reason, bail is necessary. The defendants have also expressed the fear, in large part due to the revelations of the Tanenbaum affidavit, that their conversations with counsel at the jail are being overheard. This fear, which is well-justified in counsel's view, inhibits the free communication necessary to the effective assistance of counsel.

24. I have discussed with a number of persons having reliable secondhand knowledge the contents of the explosive device referred to in the indictment, and the manner in which Officer Brian Murray met his death. It is my belief that the evidence at trial will not show that Officer Murray met his death as a result of the alleged seizure of control of the aircraft. The evidence will not show a direct causal relationship

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between any conduct of the defendant Busic and the death of Officer Murray, but rather that there was an intervening cause. The state prosecutor, Robert Tanenbaum, has said to me that the evidence does not show that the defendants had any intent to kill.

Michael E. Tigar

Subscribed and sworn to before me this ____ day of October, 1976.

Notary Public

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR REDUCTION OF BAIL

Defendant Zvonko Busic, by undersigned counsel, has moved this Court, pursuant to Rule 46 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3146, for an order reducing defendant's bail and releasing him from confinement pending trial. This Memorandum of Points and Authorities is submitted in support of the Motion for Reduction of Bail. Counsel have also offered nine supporting affidavits of counsel, the defendants' friends and responsible leaders of the community. We respectfully submit that, based on the information contained in these affidavits and the standards for pretrial release, the defendant should be released pending trial on the following conditions:

(1) placement in third-party custody of a designated person;

(2) residence at a designated place of abode;

(3) restrictions on travel and limitations on the amount of time away from his residence;

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(4) obtaining employment in New York City;

(5) daily reporting requirements; and

(6) execution of a bail bond in the amount of Fifty Thousand Dollars ($50,000).

I.

INTRODUCTORY STATEMENT

The accompanying affidavits of Michael E. Tigar, Father Mladen Cuvalo, Zdravka Logarusic, Anthony Barulich, Zvonko Crnogorac, Marijan Gabelica, Stjepan Galic, Ante Gojceta, and Steven Ivkosic disclose the following facts pertinent to the pretrial release of Zvonko Busic on the conditions outlined above.

Zvonko Busic has firm community ties in the New York area. He has resided in Manhattan for the past one and one-half years. During that time, he has established solid roots. Until he was laid off, he worked steadily as an elevator operator at 7 West 96th Street. He won the confidence and admiration of his employer and the tenants as an honest, reliable, and trustworthy person. While living in Cleveland and Portland, he likewise found full-time employment and supported his family.

The defendant's ties to this area extend to the religious and cultural life of the community. He is a faithful parishioner at Sts. Cyril and Methodius and St. Raphael's Roman Catholic Church. He regularly participates in social, political and educational activities of the Croatian Center adjacent to the church and the Croatian radio station.

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From all accounts, Zvonko Busic is an acknowledged leader in the community--a man to whom others look with respect and admiration. The most frequent description of him is that he is a man of integrity who appreciates the meaning of a promise and would do nothing to bring dishonor to those who placed their faith in him. All affiants have no doubts that he will abide by any release conditions established by the Court and that he will faithfully appear in court as required.

Zvonko Busic has never been convicted of a crime of violence. His brief encounters in 1971 with the criminal justice system in Cleveland did not result in any convictions for violent offenses. The charges stemming from an altercation among Yugoslavians were dismissed. The disorderly conduct charge was promptly dismissed once it was learned that he had not provoked the sudden attack in a Cleveland bar.

The defendant was released on a nominal bail of $200 in connection with both Cleveland charges. He appeared as required on five occasions, and his bail was returned to him both times. Zvonko Busic's unblemished record of appearance at court proceedings further demonstrates that he will appear as required in this case.

The defendant's friends, as well as religious and civic leaders in the community, have no reservations about his peaceful, nonviolent behavior if released pending trial. They do not consider him a danger to any particular person or to the

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community. Nor do they have any qualms about vouching for his conduct as third-party custodians.

The restrictive conditions of release recommended by counsel are carefully tailored to minimize any risk of flight and to guarantee the defendant's presence at trial. Those who have volunteered to assume custody, to provide living accommodations and to furnish employment are fully aware of the important responsibilities that they are assuming. They have expressed their willingness to cooperate with the Court in any reporting and supervision requirements established as a condition of release.

In addition to the close scrutiny that the defendant will receive from his custodian, the proposed release conditions contemplate even more rigorous restrictions on his freedom of movement. Defendant is willing to submit to restrictions on travel and on the amount of time away from his residence. The requirement of employment, in addition to assuring that the defendant will not be a financial burden on society, also curtails his ability to travel and adds another protective device for assuring his presence at trial. Likewise, the obligation to report daily to a designated official further minimizes the likelihood of flight. Finally, the requirement of posting a bail bond of $50,000 demonstrates that the defendant, far from absconding and disappointing his friends and supporters, will honor the faith placed in him.

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II.

ARGUMENT

A. The Right to Nonexcessive Bail.

The Eighth Amendment's guarantee against excessive bail is a fundamental right afforded criminal defendants. It is "basic to our system of law, Stack v. Boyle, 342 U.S. 1 (1951); Herzog v. United States, 75 S. Ct. 349, 351, 99 L. Ed. 1299, 1301 (1955) (opinion of Douglas, J.)." Schilb v. Kuebel, 404 U.S. 357, 365 (1971). Protection against confinement prior to trial serves to promote other cherished rights of the accused. As the Supreme Court has declared:

> "This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. See Hudson v. Parker, 156 U.S. 277, 285 (1895). Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." Stack v. Boyle, supra, 342 U.S. at 4.

Pretrial release from confinement is an indispensable prerequisite for the effective assistance of counsel and the unimpeded investigation of the facts necessary for the preparation of defense. Cf. Bitter v. United States, 389 U.S. 15 (1967) (conviction reversed because defendant was improperly confined during trial). As the Ninth Circuit stated in ordering the pretrial release of a minor defendant to the custody of his parents or counsel,

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> "The ability of an accused to prepare his defense by lining up witnesses is fundamental, in our adversary system, to his chances of obtaining a fair trial. Recognition of this fact of course underlies the bail system. Stack v. Boyle, 342 U.S. 1, 4, 72 S.Ct. 1, 96 L. Ed. 3 (1951). But it is equally implicit in the requirements that trial occur near in time, Klopfer v. North Carolina, 386 U.S. 213, 87 S. Ct. 988, 18 L. Ed. 2d 1 (1967), and place (U.S. Const. Amend. VI) to the offense, and that the accused have compulsory process to obtain witnesses in his behalf. Washington v. Texas, 388 U.S. 14, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). Indeed, compulsory process as a practical matter would be of little value without an opportunity to contact and screen potential witnesses before trial.
>
> "This is not a case where release from detention is sought simply for the convenience of the appellant. There is here a strong showing that the appellant is the only person who can effectively prepare his own defense. We may take notice, as judges and lawyers, of the difficulties often encountered, even by able and conscientious counsel, in overcoming the apathy and reluctance of potential witnesses to testify. It would require blindness to social reality not to understand that these difficulties may be exacerbated by the barriers of age and race. Yet the alternative to some sort of release for appellant is to cast the entire burden of assembling witnesses onto his attorneys, with almost certain prejudice to appellant's case." Kinney v. Lenon, 425 F.2d 209, 210 (9th Cir. 1970)

The historical purpose of bail has been to assure the defendant's presence in court and his submission to the judgment of the court. See, e.g., Stack v. Boyle, supra, 342 U.S. at 4-5; Reynolds v. United States, 80 S. Ct. 30, 4 L.Ed.2d 46, 48 (1959) (opinion of Douglas, J.); United States v. Foster, 278 F.2d 567, 570 (2d Cir. 1960). As Judge Pollack has cautioned:

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> "[T]he function of bail is not to purchase freedom for the defendant but to provide assurance of his reappearance after release on bail; a guarantee of the obligation of the defendant to appear. The bail is not for the purpose of providing funds to the government to seek the defendant should he go underground or flee the jurisdiction. Bail is intended as a catalyst to aid the appearance of the defendant when wanted." United States v. Melville, 309 F.Supp. 824, 826-27 (S.D.N.Y. 1970).

The amount of bail and conditions of release "must be based upon standards relevant to the purpose of assuring the presence of the defendant." Stack v. Boyle, supra, 342 U.S. at 5. "Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is 'excessive' under the Eighth Amendment. See United States v. Motlow, 10 F.2d 657 (1926, opinion by Mr. Justice Butler as Circuit Justice of the Seventh Circuit)." 342 U.S. at 5; see also United States ex rel. Rubinstein v. Mulcahy, 155 F.2d 1002 (2d Cir. 1946). Bail may not be denied, or set at an unrealistic level, because the defendant's presence cannot be conclusively guaranteed. "The law requires reasonable assurance but does not demand absolute certainty, which would be only a disguised way of compelling commitment in advance of judgment." United States v. Alston, 420 F.2d 176, 178 (D.C. Cir. 1969). Doubts about granting bail "should always be resolved in favor of the defendant." Herzog v. United States, supra, 99 L.Ed. at 1301.

With the passage of the Bail Reform Act (18 U.S.C. §§ 3146-52), Congress sought to halt abusive bail practices and

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"to give meaning to some of our highest ideals of justice." United States v. Leathers, 412 F.2d 169, 170 (D.C. Cir. 1969). By its terms the Act creates a strong policy in favor of pretrial release. See, e.g., United States v. Edson, 487 F.2d 370, 372 (1st Cir. 1973); Wood v. United States, 391 F.2d 981, 983 (D.C. Cir. 1968); United States v. Leathers, supra, 412 F.2d at 171; cf. United States v. Fields, 466 F.2d 119, 121 (2d Cir. 1972) (presumption in favor of release even after conviction). Congress repudiated the notion that the key to the jailhouse door can be purchased only by those defendants affluent enough to pay money bail. See Russell v. United States, 402 F.2d 185, 186 (D.C. Cir. 1968); cf. Bandy v. United States, 82 S. Ct. 11, 12-13 (1961) (opinion of Douglas, J.). Likewise, the federal bail law categorically rejects preventive detention pending trial in favor of "the release of an accused on the least restrictive alternative conditions which will provide reasonable assurance that the accused will appear in court." United States v. Cowper, 349 F.Supp. 560, 562 (N.D. Ohio 1972); see also United States v. Melville, 306 F.Supp. 124, 125-26 (S.D.N.Y. 1969); United States v. Erwing, 268 F.Supp. 879 (N.D. Cal. 1967).

> "The low priority given by Congress to monetary conditions was enacted into the statute in order to prevent pretrial detention resulting from indigency. The authors of the Act were fully aware that the setting of bond unreachable because of its amount would be tantamount to setting no conditions at all. Conditions which are impossible to meet are

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> not to be permitted to serve as devices to thwart the plain purposes of the Act, nor are they to serve as a thinly veiled cloak for preventive detention." United States v. Leathers, supra, 412 F.2d at 169.

B. Standards for Pretrial Release.

The Bail Reform Act provides that in noncapital cases the defendant

> "shall . . . be ordered released pending trial on his personal recognizance or upon the execution of an appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required." 18 U.S.C. § 3146(a).

If the court makes such a determination, it must then consider imposing as substitute or additional methods of release a single condition or combination of conditions in the following order: (1) third-party custody; (2) restrictions on travel, association or place of residence; (3) execution of an appearance bond and a maximum 10% cash deposit; and (4) execution of a bail bond with sureties or the deposit of cash as bail. Id. In determining the appropriate release conditions, the court may consider, among other things, the offense charged, the weight of the evidence, family ties, employment, financial resources, character and mental condition, community ties, record of convictions and prior record of appearances at court proceedings. 18 U.S.C. § 3146. These factors, however, do not affect whether the accused shall be

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placed on bail--the statute clearly requires release--but rather relate to the conditions of release.

The Bail Reform Act establishes "a hierarchy of conditions, one of the least favored of which is a requirement of bail bond." Wood v. United States, supra, 391 F.2d at 983. As Judge Frankel observed in setting bail in a prosecution for conspiracy to explode bombs in federal and other buildings in New York City:

> "'The Bail Reform Act creates a strong policy in favor of release on personal recognizance, and it is only if "such a release would not reasonably assure the appearance of the person as required" that other conditions of release may be imposed.' Wood v. United States, supra, 391 F.2d at 983. Those words, fairly characterizing the terms of the statute, seem to tell the whole story in terms of release--on selected conditions in progressive degrees of onerousness, but release on some conditions in any event." United States v. Melville, supra, 306 F. Supp. at 127.

In capital offenses and pending appeal, the defendant

> "shall be treated in accordance with the provisions of section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community." 18 U.S.C. § 3148.

In capital cases, therefore, the defendant is bailable as of right, with the added requirement of no reasonable likelihood of danger to the community. Indeed, the same presumption of releasability applies in capital prosecutions. See, e.g., United

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States v. Harrison, 405 F.2d 355 (D.C. Cir. 1968) (felony murder); Stinnett v. United States, 387 F.2d 238 (D.C. Cir. 1967) (first-degree murder); Drew v. United States, 384 F.2d 314 (D.C. Cir. 1967) (first-degree murder). As one court held in reversing the denial of bail in a murder prosecution:

> "The District Judge apparently rested his finding of a risk of flight upon the severity of the sentence that could be imposed on appellant if she were convicted on the murder charge. If this factor alone were determinative, however, release would never be possible in a capital case, and the statutory scheme that Congress so carefully established for such cases [18 U.S.C. § 3148] would be nullified completely. . . . Though charged with a capital offense, appellant is presumptively releasable . . . ." White v. United States, 412 F.2d 145, 146-47 (D.C. Cir. 1968).

Federal bail law, both before and after the Bail Reform Act, has not recognized any category of offense for which, or types of offenders for whom, bail can be automatically or even routinely denied. For example, bail has been granted for "the most heinous case" such as treason, Carbo v. United States, 82 S. Ct. 662, 7 L.Ed.2d 769, 775 (1962) (opinion of Douglas, J.); for rape, robbery and sodomy, Ball v. United States, 402 F.2d 206 (D.C. Cir. 1968); and piracy, United States v. Jones, 26 F.Cas. 658 (No. 15495) (C.C. Pa. 1813). Bail cannot be denied "merely because of the community's sentiment against the accused nor because of an evil reputation." Carbo v. United States, supra, 7 L.Ed.2d at 772; see also Cohen v. United States, 82 S. Ct. 8, 7 L.Ed.2d 13, 14 (1961) ("equal justice under law requires that

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bail not be denied even a notorious law-violator"). Nor may bail be denied because the accused is not a United States citizen. United States v. Honeyman, 470 F.2d 473 (9th Cir. 1972); United States v. Bobrow, 468 F.2d 124 (D.C. Cir. 1972).

The function of bail is to assure the accused's presence in court as required. The bail hearing cannot be transformed into a mini-trial on the defendant's guilt or innocence.

> "It is true, of course, that 18 U.S.C. § 3146(b) requires the court to take into account 'the nature and circumstances of the offense charged [and] the weight of the evidence against the accused,' but the statute neither requires nor permits a pretrial determination that the defendant is guilty. It is important to observe rather than obliterate the fundamental precepts of our jurisprudence. This is not merely a matter of proprieties, though that is itself not unimportant for judicial actions. If one bears in mind that one is examining only the evidence against the accused, for purposes of considering prospect of flight, one is more likely to guard against the impermissible course of reaching some kind of partial determination of guilt and of beginning what is in substance a mandate of punishment." United States v. Alston, supra, 420 F.2d at 180; see also United States v. Edson, supra, 487 F.2d at 372; United States v. Honeyman, supra, 470 F.2d at 474.

Under both § 3146 and § 3148, the burden is on the government to establish that one or more recommended release conditions will not reasonably guarantee the accused's presence or minimize any threat to the community. Leary v. United States, 431 F.2d 85, 89 (5th Cir. 1970); Ward v. United States, 76 S. Ct. 1063, 1 L.Ed.2d 25 (1956). Bail may be denied only for "the strongest

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of reasons", Sellers v. United States, 89 S. Ct. 36, 21 L.Ed.2d 64, 66 (1968); and "only in cases in which, from substantial evidence, it seems clear that the right to bail may be abused or the community may be threatened by the applicant's release." Leigh v. United States, 82 S.Ct. 994, 8 L.Ed.2d 269, 271 (1962) (opinion of Warren, C.J.). "Danger" for purposes of bail cannot encompass the constitutionally protected exercise of speech, press, and associational freedoms. Williamson v. United States, 184 F.2d 280 (2d Cir. 1950) (opinion of Jackson, Jr.); Leary v. United States, supra, 431 F.2d at 89.

The requisite showing of dangerousness must relate "to some kind of danger that so jeopardizes the public that the only way to protect against it would be to keep the applicant in jail." Sellers v. United States, supra, 21 L.Ed.2d at 67 (emphasis supplied). Any evidence concerning flight or dangerousness must be offered by the government at a hearing at which the accused's counsel may refute the government's allegations. See United States v. Wind, 527 F.2d 672, 675-76 (6th Cir. 1975); United States v. Melville, supra, 306 F.Supp. at 128 n.4. In setting bail for defendants charged with the "grave and alarming" offense of conspiracy to bomb numerous buildings in New York City, Judge Frankel stressed that, although the government's evidence "is seemingly substantial" and "[t]he objectives of the alleged conspiracy are . . . terrifying", the defendants are presumed innocent and bailable. United States v. Melville, supra, 306 F.Supp. at 125, 128.

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The court must make "a particularized determination" as to each defendant and may not order confinement on "an undiscriminating wholesale basis." Fernandez v. United States, 8 S. Ct. 642, 644 (1961) (opinion of Harlan, J.). Because "[e]ach defendant stands before the bar of justice as an individual", Stack v. Boyle, supra, 342 U.S. at 9 (separate opinion of Jackson, J.), the Second Circuit has emphasized that "the setting of bail is a highly individualized process and does not lend itself to slide rule resolution." People of State of New York v. Hutchinson, 360 F.2d 759, 762 (2d Cir. 1966); see also United States v. Briggs, 476 F.2d 947, 948-49 (5th Cir. 1973). In ruling on bail, the court must set forth its findings in writing and with particularity. See 18 U.S.C. § 3146(d); Rule 9(a), Federal Rules of Appellate Procedure; United States v. Fields, supra, 466 F.2d at 121.

C. Applicability of 18 U.S.C. § 3148.

In Count I of the indictment, the government has charged a violation of 49 U.S.C. § 1472(i), which provides in pertinent part:

> "Whoever commits or attempts to commit aircraft piracy . . . shall be punished--
>
> * * *
>
> (B) if death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life." (Emphasis supplied).

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The offense of aircraft priacy is defined in § 1472(i)(2) in pertinent part as "any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent, of an aircraft . . . ."

As the accompanying affidavit of Michael E. Tigar shows, it is highly doubtful that the defendant is subject to the death penalty provisions of § 1472. Counsel know at this time of no evidence indicating that the defendant placed a live explosive device in connection with the events recited in the indictment. The state prosecutor, Robert Tanenbaum, has told counsel that he is convinced that the defendant had no intent to kill anyone.

The language of the statute under which the defendant is charged convincingly refutes any suggestion that this is a capital case. Counsel knows of no evidence indicating that the death of New York City Police Officer Brian Murray "result[ed] from . . . [the] seizure or exercise of control" of the Boeing 727. Moreover, 49 U.S.C. § 1473(c)(6) precludes the imposition of the death penalty if the accused "could not reasonably have foreseen that his conduct in the course of commission of the offense . . . would create a grave risk of causing death to another person." (Emphasis supplied). This statutory language clarifies the meaning of "if death . . . results from the commission . . . of the offense" in § 1472(i) and rules out the imposition of the death penalty.

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The defendant may require that the Court look behind the indictment. Under 18 U.S.C. § 3148, the government must shoulder the burden of establishing that this is a capital case and that the defendant poses a serious risk of flight and danger that cannot be reasonably mitigated by appropriate release conditions. As the New Jersey Supreme Court held in the context of bail under its state constitutional provision barring bail in capital cases "where the proof is evident, or the presumption great":

> "The first matter to be appraised in a proceeding for bail is the indictment. In the light of the Constitution and the traditional methods of administration of the criminal law in New Jersey [,] the indictment, representing as it does only a formal charge, should not be regarded as sufficient to demonstrate that proof of a capital offense is evident or the presumption great. Nor do we believe it should be vested with sufficient prima facie force to bring the charge within the reservation of the Constitution. . . .
>
> "Bail, then, being the right of every citizen charged with any crime excepting only the type of capital offense when the proof is evident or the presumption great, who should have the onus of establishing that conditional freedom should be granted or denied? The answer is not difficult. The burden should rest on [the government;] the party relying on the exception. That is the logical and natural rule and the one which conforms with the pervasive presumption of innocence attending all criminal charges. In fact, there is an indissoluble connection between that presumption and the right to liberty before conviction." State v. Konigsberg, 33 N.J. 367, 164 A.2d 740, 743, 744 (1960).

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Defendant submits that based on the language of the statute and the evidence, this is not a capital case and the dangerous propensities standard of 18 U.S.C. § 3148 is inapplicable. The sole issue before the Court, therefore, is whether the proposed release conditions, patterned after 18 U.S.C. § 3146(a) and discussed in detail infra, will "reasonably assure the appearance of the [defendant] as required." In the event that the Court concludes that the defendant is charged with a capital offense, we submit that the overwhelming evidence--from friends, relatives, clergymen, and community leaders--conclusively confirms that not only will the defendant faithfully attend all court proceedings, but that he does not pose a danger to any person or the community.

D. Proposed Release Conditions.

Counsel propose that the Court establish the following release conditions:

(1) placement in the third-party custody of a designated person;

(2) residence at a designated place of abode;

(3) restrictions on travel and limitations on the amount of time away from his residence;

(4) obtaining employment in New York City;

(5) daily reporting requirements; and

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(6) execution of a bail bond in the amount of Fifty Thousand Dollars ($50,000).

These conditions are designed in response to the mandate of the Eighth Amendment and the Bail Reform Act that release conditions be flexible, imaginative, and individualized. See, e.g., United States v. Fields, supra, 466 F.2d at 121; United States v. Bronson, 433 F.2d 539 (D.C. Cir. 1970); Banks v. United States, 414 F.2d 1150, 1154 (D.C. Cir. 1969); People of State of New York v. Hutchinson, supra, 360 F.2d at 762. We should recall that absolute certainty of the defendant's appearance is not the standard for setting bail.

> "[This] plan would involve risk. But this is not decisive; for any release plan--however partial or limited--necessarily involves risk. Congress understood this very well, and only asked that the risks taken be not excessive, that the conditions be such as 'to reasonably assure that [the person] will not flee . . . .'
>
> "The question, then, is the assessment of the extent of the risk." Banks v. United States, supra, 414 F.2d at 1154 (Levanthal, J., dissenting).

The recommended conditions have received widespread acceptance in the federal courts as realistic safeguards for the release of a defendant pending trial.

The restrictions involving third-party custody, residence and employment establish, as well as take advantage of, Zvonko Busic's close community ties. See Ball v. United States, supra, 402 F.2d at 207-08; cf. United States v. Bronson, supra,

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433 F.2d at 540 (a serviceman's "lack of close family and community ties is not an insurmountable obstacle to pretrial release [and can be overcome] by the imposition of carefully chosen conditions"). The defendant's

> "stability and ties to the community are further demonstrated by the concern manifested by several members of his church, [several] of whom offered [him] . . . a home to live in should he gain release." Banks v. United States, supra, 414 F.2d at 1153.

A requirement of reporting by the defendant, his custodian, and employer is an established means for assuring the defendant's presence. See, e.g., Sellers v. United States, supra, 21 L.Ed.2d at 68; Ball v. United States, supra; United States v. Alston, supra.

> "Well-designed reporting procedures can reduce the temptation to flee by providing prompt communications with judicial authorities if the individual departs from his usual routine. If conditions of release are violated, such a report can lead to prompt apprehension and possible prosecution under the criminal bail-jumping provision. All conditions of pretrial release have as their goal the close supervision of the defendant in order to curtail his opportunity to flee. A desirable by-product is that often any danger to the public presented by the release can also be minimized." United States v. Leathers, supra, 412 F.2d at 172-73.

The prophylactic effect of a reporting procedure is appreciably enhanced by the recommended requirement that the defendant make a daily report. See United States v. Melville, supra, 306 F.Supp. at 129.

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Defendant no longer possesses the legal documents for foreign travel. United States v. Cook, 442 F.2d 723, 724 n.1 (D.C. Cir. 1970). Territorial limitations as a condition of pretrial release are effective and well-established. United States v. Foster, supra, 278 F.2d at 570. To further minimize the likelihood of flight, the defendant is willing to submit to restrictions concerning the amount of time away from his residence.

We have also requested that the Court substantially reduce the cash bail of One Million Dollars ($1,000,000) to a realistic and attainable amount. "There is . . . no possibility that any of these defendants will achieve release by posting bond in anything like the amount which has been set." United States v. Melville, supra, 306 F.Supp. at 127. The posting of a $50,000 bond will require considerable sacrifice on the part of the defendant and others and will supply an added measure of assurance that the defendant will appear as required.

Finally, the alarming disclosures in the affidavit of state prosecutor Robert Tanenbaum--concerning the intrusion of a government agent, James O'Brien, into the deliberations of counsel and the defendants in this case--is a weighty factor in determining the conditions of release. If the defendant remains confined pending trial, this experience, at the very outset of the preparation of a defense, can serve only to instill in his mind ths justifiable fear that he cannot meet and communicate with his

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counsel in privacy and away from eavesdropping government officials and undercover agents. Only release from confinement will begin to restore the defendant's confidence and assure that he receives an unhampered defense. Bitter v. United States, supra; see Kinney v. Lenon, supra.

III.

CONCLUSION

The defendant stands charged of serious offenses. But he also stands before this Court and the community as an innocent man. As such he is entitled to the full panoply of rights and privileges historically accorded the criminally accused. One such protection--pretrial release on bail--is essential in consulting counsel, searching for evidence and witnesses and mounting a defense. While the release of any defendant entails a risk of flight, "[t]hat is a calculated risk which the law takes as the price of our system of justice." Stack v. Boyle, supra, 342 U.S. at 8 (separate opinion of Jackson, J.).

In this case, however, the likelihood of flight is negligible. Zvonko Busic is a well-regarded, conscientious member of the community. His ties run deep and include a good record of employment, close personal friends, regular religious devotion, and extensive social and political activities. In the face of these grave charges, the community has responded by offering him a home, a job, and a helping hand.

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The proposed release conditions are specially tailored to strike a balance between the defendant's need to be free from the constraints of incarceration to assist in the preparation of his defense and the Court's obligation to minimize the prospect of flight. Moreover, if this be deemed a capital case, these conditions are designed to allay the Court's concerns that the defendant poses a danger to the public.

We respectfully request that the Motion for Reduction of Bail be granted and that the defendant Zvonko Busic be released from confinement pending trial on the conditions outlined by counsel.

Dated: Washington, D.C.
October 27, 1976

Respectfully submitted,

Michael E. Tigar

Michael E. Tigar

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,	
v.	76 Cr. 602 (JRB)
ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	AFFIDAVIT OF SERVICE

The undersigned, being duly sworn, deposes and says:

1. I am over the age of eighteen years, and not a party to this action.

2. On October 27, 1976, I served the following papers: Notice of Motion, Memorandum of Points and Authorities in Support of Motion for Reduction of Bail and Affidavits of Anthony Barulich, Zvonko Crnogorac, Mladen Cuvalo, Marijan Gabelica, Stjepan Galic, Ante Gojceta, Steven Ivkosic, Zdravka Logarusic, and Michael E. Tigar.

3. Service was effected by depositing a copy of each paper, first-class postage fully prepaid, in the United States mails at Washington, D. C., addressed as follows:

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David Rudolph
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Michael E. Tigar

Subscribed and sworn to before me this _____ day of October, 1976.

Notary Public

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

-against- :

ZVONKO BUSIC, JULIENNE BUSIC, PETAR METANIC, FRANK PESUT and MARK VLASIC, :

Defendants. :

----------X

AFFIDAVIT IN SUPPORT OF MOTION FOR REDUCTION OF BAIL.

76 CR 602

STATE OF NEW YORK)
COUNTY OF KINGS) SS:

DAVID S. RUDOLF, being duly sworn, deposes and says:

1. He is an attorney associated with WILLIAM J. GALLAGHER, ESQ., Federal Defender Services Unit/The Legal Aid Society, the attorney of record assigned under the Criminal Justice Act to represent the defendant herein, JULIENNE BUSIC.

2. This affidavit is submitted in support of the defendant's motion pursuant to Rule 46 of the Federal Rules of Criminal Procedure and 18, U.S.C. §3146 for reduction of bail. It is based upon conversations with the defendant, her family, and their friends and acquaintances.

3. In a three count indictment the defendant, JULIENNE BUSIC, and four others have been charged with air piracy and conspiracy. The defendants were arraigned before United States Magistrate A. Simon Chrein on September 13, 1976, at which time bail in the amount of one million dollars surety bond was set for each defendant. On September 27, 1976, the defendant entered a plea of not guilty before this Court and reserved her bail application for a later date. On October 13, 1976, the Court set the case for trial on December 6, 1976 and directed that all bail applications be heard on November 8, 1976.

4. Julienne Busic was born on September 20, 1948 in

Eugene, Oregon. Her father, Richard Schultz, is currently a Professor of Classical Greek at Portland State University, where he has also taught English Literature. Her mother, Jeanne Schultz, has worked in the local high school for the past five years. The Schultzs have lived in Portland, Oregon, for the past 22 years and have three other children: Richard, who is 25 years old, a student at Portland State University, and lives with his wife and 2 children in Portland; Stewart, who is 19 hears old, a freshman at Reed College in Portland, and lives with his parents; and Todd, who is 13 years old and a junior high school student. Mrs. Schultz's family has resided in Oregon for over 100 years, and Mr. Schultz's family settled in Oregon approximately 75 years ago.

5. Julienne Busic attended public schools in Portland, Oregon and was graduated from John Marshall High School in June, 1966. At the time of her graduation she was the Student Body Treasurer and was a member of the class Honor Roll. She then enrolled as a student at the University of Oregon in Eugene, where she majored in German. Between 1966 and 1973 she interrupted her studies on several occasions to go to Austria in an attempt to sharpen her language skills and familiarize herself with German literature and culture. These trips were paid for with money which she earned from part-time jobs. In September, 1973, she returned to Portland with her husband Zvonko, whom she had met in Vienna, and enrolled in Portland State University. She attended Portland State until March, 1975, when she graduated, cum laude, with a degree in German and a teaching certificate in English as a second language. She belonged to absolutely no political clubs or organizations, and took no real interest in political activity.

6. While attending college and studying in Europe,

Julienne Busic held several part-time jobs in order to pay for her tuition and living expenses. On her first trip to Austria in September, 1967, she lived in Vienna with Herman and Elizabeth Pedit and worked as an English tutor and governess for the Pedit children until March, 1968, when she returned to the United States. From January, 1969 until March, 1969, she worked for the Meier and Frank Company as a credit clerk. From September, 1969 until June, 1970, while enrolled as full-time student at the University of Oregon, Mrs. Busic worked in a nursing home as a nurse's aid. She returned to Vienna in September, 1970, and worked as a nurse in the eye clinic of the University Hospital there. When she returned to the United States in August, 1972, she and her husband worked as superintendants of an apartment complex in Cleveland, Ohio. They moved back to Oregon in April of 1973 so that Julienne could complete her degree requirements. While attending Portland State from September, 1973 until March, 1975, she worked nights as a waitress in the Hilton Hotel.

7. After graduating from college in March, 1975, the Busics moved to New York City, where they resided until their arrest. From April, 1975 until August, 1976, Julienne Busic was steadily employed as an English teacher at the School for Computer Studies, 147 West 42nd Street, Manhattan.

8. Julienne Busic has never before been arrested in the United States for any violation of law. In November, 1970, she was detained in Zagreb, Yugoslavia, for peacefully distributing leaflets, and was expelled as a result of that activity.

9. At the time of her arrest in Paris on September 11, 1976, Julienne Busic's United States Passport was seized. Counsel believes that this passport is currently in the custody and control of law enforcement officials. Therefore, she would be unable to leave the United States if released on bail.

10. Julienne Busic has an excellent reputation for honesty, trustworthiness and non-violence among the people who are most familiar with her background and character. In this connection, counsel has spoken with the following people:

(a) Dr. Richard Scott, who is a practicing attorney in Los Angeles, California, as well as an Assistant Professor of Emergency Medicine at the University of Southern California School of Medicine. Dr. Scott has known Julienne Busic and her parents since 1956, and has maintained frequent contact with them over the years. He stated that he knows Julienne Busic to be an honest person, that her moral integrity is unimpeachable, that she is in no way violent, and that in his opinion she would pose absolutely no danger to the community if she were released pending trial.

(b) Mr. William Bowyer, who is currently the Chief District Attorney in Tillamook County, Oregon. Mr. Bowyer has been a District Attorney for approximately four years, and has known Julienne Busic for approximately the same length of time. He and his wife, Joanne, maintained frequent contact with her when she resided in Oregon, and kept in touch even after she moved to New York. Mr. Bowyer indicated that Julienne Busic was an honest and dependable person who was incapable of violence. He further stated that if she gave her word to appear for a court appearance she would appear, "because that's the kind of person she is."

(c) Mr. John Norling, who owns and operates a home construction business in Seaside, Oregon. Mr. Norling and his wife, Hazel, who is a school teacher, have known Julienne Busic for approximately 10 years, and saw her frequently on a social basis when she lived in Oregon. Mr. Norling stated that Julienne was the kind of person you could trust and rely upon, that she was "definitely non-violent", and that in his opinion she would

attend all her court appearances if released, because it would be totally out of character for her to break a commitment.

(d) Mrs. Hugh Ewart, who is a housewife and Sunday School teacher at the Methodist Church in Portland, Oregon. Mrs. Ewart and her husband, who is a violinist with the Portland Symphony Orchestra, have known Julienne Busic and her parents for 15 years. She indicated that Julienne had often served as the babysitter for her children, that she trusted her completely, and that Julienne had always kept her commitments. Mrs. Ewart also said that she had maintained contact with Julienne Busic over the years, and that she considered her to be a very gentle, softspoken, considerate person.

(e) Dr. Franz Langhammer, who has been a Professor in the Foreign Language Department of Portland State University for approximately 20 years. Dr. Langhammer stated that he has known Mrs. Busic's parents for approximately 13 years, and got to know Julienne Busic herself quite well when she attended Portland State and was a student in several of his classes. He also had frequent contact with her outside the classroom during meetings of the German Language Club, of which she was a member. Dr. Langhammer said that Julienne Busic was an extremely able and reliable student and a sensitive, kind and understanding human being. He further stated that she was, in his opinion, extremely honest and would keep any commitments which she made.

(f) Mr. Sven Reinholtz, who is the Dining Room Manager at the Hilton Hotel in Portland. Mr. Reinholtz was Julienne Busic's immediate Supervisor when she worked at the Hilton Hotel from 1973 through March, 1975. He stated that she was a very reliable and trustworthy employee who always kept her work commitments.

(g) Mr. Steven Sunshine, who is the Director of the English Department at the School for Computer Studies in New York City. From April, 1975 until August, 1976, Mr. Sunshine was Julienne Busic's supervisor at the school. He and his wife Madeline also had frequent contact with Mrs. Busic and her husband outside of school. He indicated that Julienne Busic was one of the most reliable teachers he had ever had contact with, that she always came early and often stayed late to help her students, that she had tremendous rapport with her students and never lost her temper in the time he knew her. He further stated that she was a gentle and honest person, was extremely responsible, and would keep her commitment to return to Court if released pending trial. He also indicated that he would be most willing to employ her as a teacher if she was released.

11. Richard and Jeanne Schultz, Julienne Busic's parents, have informed counsel that the only financial assets they have are their home in Portland and its furnishings, which have a total cash equity value of approximately $50,000. This represents the sum total of their life savings and the only security they and their other children have. Nevertheless, they are willing to post their home and belongings as collateral to secure Julienne's return to Court if she is released prior to trial.

12. Counsel respectfully submits that the posting of such collateral, coupled with the stringent conditions of release suggested by co-counsel, would adequately assure that the defendant, Julienne Busic, would pose no danger to the community and would return to Court when required.

13. Counsel respectfully joins in the Memorandum of Points and Authorities in support of the motion for reduction of

bail submitted on behalf of the defendant Zvonko Busic.

David Rudolf

DAVID S. RUDOLF

Sworn to before me this

27th day of October, 1976.

MS

MARION SELTZER
Notary Public, State of New York
No. 8917375
Qualified in Kings County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -X

UNITED STATES OF AMERICA,

Plaintiff

v.

NOTICE OF MOTION

76 Cr. 602 (JRB)

ZVONKO BUSIC, JULIENNE BUSIC,
PETAR MATANIC, FRANE PESUT,
and MARK VLASIC,

Defendants

- -X

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of J. Jeffrey Weisenfeld duly sworn to on the 27th day of October, 1976, and upon all prior proceedings had herein, defendant Mark Vlasic will move this Court, before Hon. John R. Bartels, on the 8th day of November, 1976 for an order granting a change of venue, for an order setting bail in a reasonable amount, and for such other and further relief which may to this Court seem just and proper.

Dated: October 27, 1976

Yours, etc.,

TO: DAVID G. TRAGER
United States Attorney
Eastern District of
New York

NANCY ROSNER, ESQ.
Attorney for Mark Vlasic
401 Broadway
New York, New York 10013
(212) 925-8844

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -X

UNITED STATES OF AMERICA,

Plaintiff

v.

AFFIDAVIT

76 Cr. 602 (JRB)

ZVONKO BUSIC, JULIENNE BUSIC,
PETAR MAMANIC, FRANE PESUT,
and MARK VLASIC,

Defendants

- -X
STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

J. JEFFREY WEISENFELD being duly sworn deposes and says:

1. I am of counsel to Nancy Rosner, Esq., attorney of record for defendant Mark Vlasic.

2. I make this affidavit in support of defendant's motion for bail pending trial and for a change of venue.

3. I make this affidavit upon information and belief; the sources thereof being the court papers in my file, and conversations with defendant and co-counsel.

4. Motion For A Change Of Venue

A. Defendant Mark Vlasic joins in all motions pertaining to a change of venue made by his co-defendants.

B. Defendant Vlasic further moves for a change of venue upon the ground that the prosecution violated the Sixth Amendment right to counsel by using as an informant an official Eastern District Court Interpreter, Mr. James O'Brien, who was assigned to this case.

1. In an affidavit dated October 18, 1976, and filed in connection with the New York State charges arising out of the same circumstances as the charge pending before this Court, Assistant District Attorney, Robert Tannenbaum informed the Supreme Court, State of New York of basically the following:

   a. On September 12, 1976 a New York State Detective, John Finnegan, of the Intelligence Division, contacted Mr. O'Brien seeking information relating to Croatian affiars.

   b. Shortly after the 12th of September, O'Brien was assigned to be the interpreter for co-defendant, Frane Pesut.

   c. During the period of time that O'Brien was acting as Court interpreter for Pesut, he supplied Finnegan with certain information relating to the relationship between co-defendant Zvonko Busic

and the other persons prior to the alleged taking of the airplane.

d. Mr. Tannenbaum was not informed of the relationship between Finnegan and O'Brien until the 14th or 15th of October, 1976.

e. Upon being so informed, Mr. Tannenbaum ordered various police officers to have no further contact with O'Brien.

f. Mr. Tannenbaum then asserts that for all of the information supplied to Finnegan there are independent sources.

g. Mr. Tannenbaum has requested that the State Court conduct a hearing to determine exactly what information was received by Finnegan from O'Brien. (affidavit annexed hereto as Exhibit "A").

C. Defendant Vlasic intends to move for a dismissal of the indictment in this Court on the grounds of a violation of the Sixth Amendment. He will request that this Court conduct a full hearing on all the pertinent facts and issues in order to determine if there has been a violation of the right to counsel

and if so, what remedy is appropriate. However, that motion will be filed on November 8, 1976, as per this Court's schedule for motions. However, in light of the fact that October 27, 1976 has been set for filing of all motions pertaining to venue, defendant is now raising that portion of the claim of violation of the Sixth Amendment which relates to venue.

D. The position of defendant is:

1. Venue is an issue for trial and further, the government must prove venue by a preponderance of the evidence. United States v. Panebianco, ___F.2d___, slip.op.p.119,131 (Oct.14,1976); United States Jenkins, 510 F.2d 495,498 (2d Cir. 1975).

2. To establish venue here, it will be necessary for the government to establish the relationship between the defendants prior to their boarding the plane in the Eastern District. This is so because:

   a. A bomb was allegedly planted in a locker within the Southern District of New York.

   b. The plane was allegedly taken by defendants in the Western District of New York.

   c. The only possible basis for venue in the Eastern District of New York is that the boarding of the plane was the

beginning of and in furtherance of the crime of air piracy.

d. The plane which was allegedly taken was scheduled to fly to Chicago.

e. A Croatian festival was to begin in Chicago. Therefore, Mark Vlasic may well have boarded the plane with only the intention of going to this festival and only at some time after the plane took off did the alleged conspiracy begin. In any event, in order to establish when the conspiracy and crime of air piracy began and where the first overt act of the conspiracy occurred, the government will have to establish that there were culpable contacts between at least two defendants prior to boarding the plane.

f. The information relayed by O'Brien to Finnegan relates to the establishment of these prior contacts.

g. Thus, as an alternative to the relief of dismissal, defendant moves for a change of venue to the Western District of New York (the situs of the taking of the

plane) to avoid the possibility of impermissible use of information transmitted by O'Brien to the New York Polic Department. The transfer of this case to the Western District of New York wou permit the government to establish appropriately that venue was predicated upon independent and non-tainted information.

E. Defendant is aware that, if opposed, this motion cannot be decided prior to a hearing to determine the facts, but, in light of the schedule for motions, defendant is making this motion at this time both to preserve the issue and to call it to the Court's attention, as early as possible.

5. Motion To Reduce Bail Pending Trial

Defendant moves for bail to be reduced to a reasonable amount and for a hearing on that motion. The reasons in support of this motion are set forth with particularity in the memorandum of law annexed hereto. To avoid repetition, all factual allegatio are contained in the memorandum of law. However, all such factual

allegations are hereby incorporated into this affidavit and are thereby made upon the same basis of information and upon the same conditions as if they appeared in this affidavit.

WHEREFORE, defendant respectfully requests that venue be changed to the Western District of New York and that bail, be reduced to a reasonable amount, pending trial and for such other and further relief which may to the Court seem just and proper.

J. JEFFREY WEISENFELD

Sworn to before me this
27th day of October, 1976.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -X

UNITED STATES OF AMERICA,

Plaintiff

v.

ZVONKO BUSIC, JULIENNE BUSIC,
PETAR MATANIC, FRANE PESUT,
and MARK VLASIC,

Defendants

- -X

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT VLASIC'S MOTION FOR
A REDUCTION OF BAIL

NANCY ROSNER, ESQ.
Attorney for Mark Vlasic
401 Broadway
New York, New York 10013
(212) 925-8844

J. JEFFREY WEISENFELD, on the Memorandum
of counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -X

UNITED STATES OF AMERICA,

Plaintiff

v.

ZVONKO BUSIC, JULIENNE BUSIC,
PETAR MATANIC, FRANE PESUT
and MARK VLASIC,

Defendants

- -X

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT VLASIC'S MOTION FOR A REDUCTION OF BAIL

ARGUMENT

DEFENDANT SHOULD BE GRANTED A REDUCTION OF BAIL TO A REASONABLE AMOUNT

I. GENERAL CONSIDERATIONS

A. The Presumption of Innocence.

At the outset and before turning to the specific issues raised by this motion, it is necessary to examine the impact of the presumption of innocence on pre-trial matters

generally and on bail, specifically. Some courts have viewed the presumption of innocence as being solely an evidentiary presumption which at trial creates the necessity of proving the accused guilty beyond a reasonable doubt. However, the increasing body of case law indicates that the presumption of innocence is much more than just a trial presumption. This presumption, if that really is the most accurate word to describe it, indicates the proper perspective from which to view all issues pertaining to those who are merely accused of a crime.* It is a fundamental concept which gives direction to our entire system of criminal justice. It also has very specific effects. For example, it has frequently been held that the presumption of innocence mandates different treatment for pre-trial detainees from that afforded to persons convicted of crimes.

> Petitioner is a pre-trial detainee and not a convict. Under the Constitution, he is presumed innocent of the pending and untried criminal charges against him. He cannot be subject to any punishment, let alone cruel and unusual punishment. Conklin v. Hancock, 334 F.Supp 1119 at 1121 (D.N.H. 1971).

Tyler v. Ciccione, 299 F.Supp. 684,687 (W.D.Mo. 1969); Jones v. Wittenberg, 323 F.Supp. 93,99-100 (D.N.D. Ohio), aff'd 456 F.2d 854 (6th Cir. 1971); Hamilton v. Love, 328 F.Supp. 1182,1191 (D.E.D.Ark. 1971); Smith v. Sampson,

*An indictment, having no evidentiary weight, does not affect the presumption of innocence. Poretto v. United States, 196 F.2d 392,395 (5th Cir. 1952); United States v. Foster, 9 F.R.D. 367 (S.D.N.Y. 1949).

349 F.Supp. 268,271 (D.N.H. 1972); See Rhem v. Malcolm, 507 F.2d 333 (2d Cir. 1974).

Most significantly for the issues involved here, the Supreme Court has indicated that there is a crucial interplay between the presumption of innocence and the traditional right to be free pending trial.

> This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. See, Hudson v. Parker, 1895, 156 U.S. 277,285, 15 S.Ct. 450,453, 39 L.Ed. 424. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning. Stack v. Boyle, 342 U.S. 1, 4-5 (1951).

Thus, it is clear that granting pre-trial bail is essential to the continued vitality of the presumption of innocence. Of course this discussion is not dispositive, but it sets a proper context in which to view the treatment of those merely accused of criminal behavior.

B. The Right to Bail in a Capital Case.

Even if it is assumed that the Supreme Court has held that there is no Eighth Amendment right to bail in a capital case (e.g. Stack v. Boyle, 342 U.S. 1,4 (1951)),

the pertinent federal statute states that in a capital case* the issues of bail:

> ...shall be treated in accordance with the provisions of §3146 (Release in non-capital cases prior to trial) unless the Court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. 18 U.S.C. §3148.

Both the statute and the case law make it clear that in capital cases, there is a right to release on bail which can only be defeated by a showing made by the government that the accused will flee or pose a danger to others. In other words, defendants in capital cases "are presumptively to be released under §3146..." S.Rep.No.750, 89th Cong., 1st Sess.19 (1965); H.R.Rep. No.1541, 89th Cong., 2d Sess.15 (1965); White v. United States, 412 F.2d 145,147 (D.D.C. 1968); Leary v. United States, 431 F.2d 85,87-88 (5th Cir. 1970); Harris v. United States, 404 U.S. 1232 (1971)(Douglas, J., sitting as a Circuit Justice).

The effect of this presumption in favor of release on bail is to place the burden upon the government to establish that bail should be denied. Harris v. United States, supra at 1232-33; Ward v. United States, 76 S.Ct.1063 (1956) (Frankfurter, J. sitting as a Circuit Judge); White v. United States, supra; Leary v. United States, supra.

*While the statute treats bail on appeal and bail in capital cases the same, it is defendant's position that those not yet convicted should be more readily released on bail than those already convicted. This is necessary to give effect to the presumption of innocence. However, another reason for this distinction lies in the fact that preparation for trial is more seriously impeded by incarceration than is preparation for an appeal.

Under the statute, bail may be denied only if the government establishes either, 1) that it cannot be reasonably assured that the accused will not flee or 2) that it cannot be reasonably assured that the accused will not pose a danger to any other person or to the community. 18 U.S.C. §3148.

C. Effects of Pre-Trial Incarceration

The importance of release on bail is not restricted to the avoidance of the "infliction of punishment prior to conviction". The adverse impact of detention ranges from interference with defense preparation for trial, which may increase the likelihood of conviction, to the inducement or coercion of guilty pleas. Studies have shown that defendants released on bail suffer a much lower rate of conviction than those detained. See, Ares, Rankin & Sturz, "The Manhattan Bail Project; An Interim Report on the Use of Pre-Trial Parole," 38 N.Y.U.L.R. 67,84 (1963). Nor can this lower conviction rate be explained away by the fact that many of the factors which lead to release on bail also favor the accused's innocence (e.g. the strength of the prosecution's case). Studies in which these variables are controlled, still contain a significant difference in conviction rates. See Rankin, "The Effect of Pre-Trial Detention," 39 N.Y.U.L.R. 641 (1964).

Thus it is obvious that the right to bail is most significant and, even in capital cases, should be abridged only when the purposes of bail cannot otherwise be satisfied.

> The command of the Eighth Amendment that "Excessive bail shall not be required..." at the very least obligates judges passing upon the right to bail to deny such relief only for the strongest of reasons. Sellers v. United States, 21 L.Ed.2d 64,66 (1968) (Black, J., as Circuit Justice).

Harris v. United States, supra at 1232.

D. Excessive Bail.

Once the right to bail has been established or where bail has been set, there is an absolute right that the amount of bail not be excessive. Carlson v. Landon, 342 U.S. 524,545 (1952).

> The test of excessiveness of bail is whether it is set higher than an amount reasonably calculated to adequately assure that the accused will appear when his presence is required. Stack v. Boyle, 342 U.S. 1, 4-5 (1951), United States v. Bobrow, 468 F.2d 124,127 n.16 (D.C.Cir. 1972).

Here, both by statute and case law, defendant has the right to bail. In fact, bail has been set in the amount of $1,000,000. However, this amount of bail is clearly a substitute for denying bail altogether, as such, it is clearly excessive.

II. SPECIFIC CONSIDERATIONS AS TO THE REDUCTION OF BAIL IN THIS CASE.

A. The Possibility of Flight.

§3146(b)* sets forth the statutory guidelines in determining whether or not an accused will appear for trial. The statutory criteria are the nature and circumstances of the charge, the weight of the evidence, and the character, background and financial status of the accused.

In evaluating the propriety of release in any given case, it must be remembered that:

> Admission to bail always involves a risk that the accused will take flight. That is a calculated risk which the law takes as the price of our system of justice... Stack v. Boyle, supra at 8 (concurring opinion of Jackson, J.).

An examination of the nature of the charge against Mr. Vlasic and his background sufficiently establish that he will appear whenever the court directs.

1. The Nature of the Charge

Mark Vlasic is charged with two counts of air piracy (49 U.S.C.§1472(i)(2)) and one count of conspiracy

*(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

to commit the same. There can be no denying the gravity of those charges, nor the gravity of the potential sentence. Still, §3148 creates a presumptive right to bail despite the capital nature of the offense. To set unreasonable bail merely because of the seriousness of the charge would defeat the purpose of the statute.

2. The Circumstances of the Crime

The manner in which these crimes are alleged to have been committed, indicates that there was no attempt on the part of the perpetrators to escape. The plane was never taken to a country from which there would be difficulty in securing the presence of the accused. Nor was there any attempt to use the passengers on the plane as leverage to attempt an escape. In fact, once the purposes of the alleged crime were completed (publication of the letter), the crime ended and the defendants voluntarily waived extradition and returned to the United States. These actions establish that the defendants knew from the beginning they would be captured and tried for their alleged acts. It is inconceivable that people so obviously resigned to capture, and who did nothing to avoid it, would now flee rather than face trial. Moreover, it is unrealistic to believe that Mark Vlasic will flee if released on bail. Having allegedly risked so much to achieve

publicity for his cause, it is highly unlikely, that he would now try to avoid prosecution by running away and thereby demean the very cause he attempted to advance.

Moreover, the true focus, as regards the issue of the amount of bail, should be upon that factor which can make the crime of air piracy a capital offense; namely, that a death resulted from the commission of the crime. Before one can determine the nature of the charge, the probability of capital punishment being imposed must be considered. The weaker the evidence establishing that a death resulted from the acts of the defendants, the more unlikely the imposition of capital punishment becomes. The only appropriate way for this to be accomplished is by holding an evidentiary hearing on the issue. It is defendant's position that the evidentiary hearing should accord with due process in permitting discovery, confrontation and all other appropriate rights. The legal arguments made in support of defendant's position as to the nature of the hearing to which he is entitled will be set forth in a subsequent argument in this memorandum.

3. The Weight of the Evidence

In his moving papers, Mr. Vlasic has requested a hearing on the issue of bail. A necessary part of that hearing will be a determination of the strength of the prosecution's case. This can only be done via an evidentiary

hearing. Defendants arguments as to the nature of this hearing are set forth in a subsequent argument in this memorandum.

4. Mark Vlasic's Background and Character

Mr. Vlasic was born on August 4, 1947 in Sovici, Yugoslavia.

As a youth he assisted his father in farming the family's property. He was raised to believe in and respect the Catholic religion and clergy. He was also taught to be skeptical of the "official" dogma taught in the school. Moreover, he was taught to think of himself as Croatian, not Yugoslav, and of Croatia as an independent entity. When 19, after finishing the fourth level of high school, he left Yugoslavia and went to France. There he first felt the impact of what it meant to live in a free society. No one who has not lived in a totalitarian state can fully appreciate the force of this impact. It was at this point that Mr. Vlasic fully understood what was being denied to his homeland and his people. In France, because of the aloofness of many of the French towards foreigners, he felt lonely and isolated. Yet, he held steady employment as a construction worker for SGTB and later he worked for Ghodieur Service and for a boiler service company, all in Paris.

During his stay in France, he made up his mind to come to the United States. After saving up sufficient funds, he came to the United States in February, 1969. He was immediately impressed with the degree of acceptance afforded him by Americans. He went to work for Maric Piping Co., then as a union electrician for Verner Electric Company and Danna Electric Company. For a time he was self employed as a painter (Ivan Painting Co.).

He lived in the Bronx for two years and Manhattan for one. He has lived in Connecticut for the last four and one half years; living at his present address, 1241 East Main Street, Stamford, for one year. Throughout his residence in the United States, he has been a member of and closely affiliated with St. Raphael's Roman Catholic Church in Manhattan.

Other than the present charge, Mr. Vlasic has been arrested only once and the charge was dismissed.*

From the brief synopsis of his life, it is apparent, that Mr. Vlasic has always been a law-abiding hard working individual who has a deep attachment to both the United States and to his native Croatia. Except for this case, his life has been indistinguishable from that of millions of other immigrants who came to this country and worked hard to improve their lot.

*While on a painting job, Mr. Vlasic had sexual relations with a maid in the house in which he was working. The following day when he returned to this house to finish his work he was arrested upon the complaint of the maid.

Mr. Vlasic is a man of limited means. Given the strong policy in favor of releasing an accused on bail, the most critical factor for evaluating the amount of bail, is what can the accused afford. Mr. Vlasic has little or no money or property. The amount of bail must be set with this in mind.

In sum, Mr. Vlasic's background amply supports the conclusion that he is a fit candidate for release on bail. (See affidavits of Mladen Cuvalo, Marijan Gabelica, Ante Gojceta, and Stevn Ivkosic annexed to the moving papers of co-defendants Zvonko Busic, which attest to the good character and reliability of Mr. Vlasic, as well as offer him places to live if released on bail). Moreover, the Court may set very stringent terms and conditions upon his release.

B. Danger to Another Person or to the Community

The only factor from which it can be inferred that Mr. Vlasic poses a danger to anyone is the alleged crime itself.

> The idea that it would be "dangerous" in general to allow the applicant to be at large must - if it is even a justifiable ground for denying bail... - relate to some kind of danger that so jeopardizes the public that the only way to protect against it would be to keep the applicant in jail. Sellers v. United States, supra at 67.

Nothing in Mr. Vlasic's past would indicate that if he were released he would pose any danger to anyone. The

possibility of repetition of the act of air piracy is so remote that it should not be a factor in determining danger to the community. Cf. United States v. Ewing, 280 F.Supp. 814 (N.D.Cal. 1968)(danger to continue to peddle drugs); Harris v. United States, supra at 1236.

Moreover, the very manner in which it is alleged that this crime was committed establishes that Mr. Vlasic acted in a non-violent manner.

III. THE BAIL HEARING

It is defendant's position that the hearing on the motion for bail must include a full evidentiary hearing on at least the following issues: 1) The weight of the evidence against defendant, 2) The connection between the death of Officer Murray and the air piracy and 3) The danger to the community posed by defendant's release on bail.

It is obvious that defendant is entitled to a "hearing" on his motion for bail, Stack v. Boyle, 342 U.S. 1, 6 (1951). It is also clear that at this hearing:

> ...evidence relevant to his individual case is considered to determine the amount of bail necessary to assure his presence for trial. We construe this to require, on request, a factual determination by the Court... Heikkinen v. United States, 208 F.2d 738 (7th Cir. 1953).

See, United States v. Gilbert, 425 F.2d 490 (D.C.Cir. 1969); United States v. Wind, 527 F.2d 672 (6th Cir. 1975). Cf. United States v. Robin, No. 76-1033 (2d Cir. October 15, 1976), slip op. at 5329; United States v. Rosner, 485 F.2d 1213, 1231

(2d Cir. 1973) (both cases requiring a full evidentiary hearing on sentence factors).

The reasons for requiring an evidentiary hearing (at which confrontation, the right to submit evidence and due process would be secured) is simple and obvious. It would be improper to set bail on the basis of untested allegations made by the prosecution. An indictment has no evidentiary value, Poretto v. United States, 196 F.2d 392,395 (5th Cir. 1952); United States v. Foster, 9 F.R.D. 367 (S.D.N.Y. 1949). Allegations made by a prosecutor, while possibly accurate, have no greater evidentiary value. Therefore, the only appropriate way to proceed is to have a hearing with all due process right preserved and with evidence given under oath, subject to cross-examination.

CONCLUSION

THE AMOUNT OF BAIL SHOULD BE REDUCED.

Respectfully submitted.

NANCY ROSNER, ESQ.

J. JEFFREY WEISENFELD, on the memorandum of counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA

-against-

ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC,

Defendants.

Judge Bartels

76 CR 602

AFFIDAVIT IN SUPPORT OF APPLICATION FOR BAIL REDUCTION

----------x

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

MARTIN ELEFANT, being duly sworn, deposes and says:

1. Deponent is one of the attorneys of record assigned under the Criminal Justice Act, to represent defendant, Petar Matanic.

2. This affidavit is submitted in support of defendant's motion pursuant to Rule 46 of the Federal Rules of Criminal Procedure and 18 U.S. C. § 3146, for reduction of bail. It is based upon conversations with defendant, his friends, acquaintances and co-counsel.

3. Petar Matanic was born on August 5, 1945, in G. Furjan, Croatia. Two months prior to his birth, Petar's father, then serving in the Croatian Army was killed by Communists. His father's body was dismembered and mutilated. The house where

his mother, five brothers and two sisters resided, along with the entire village was burned to the ground. The family then moved to another part of Croatia.

4. After their father's brutal murder, as Petar was growing up, the family was destitute and struggled to survive. Being the youngest child, his brothers and sisters sacrificed their education, and went to work, in order to enable Petar to attend school. When he reached high school age, his mother could no longer afford to keep him in school, and he went to reside with a brother 300 miles from his home. There he attended high school and studied technical courses. At the age of 18, he left school and spent one year in the military and then was employed on an agricultural farm in Croatia.

5. Convinced that there was no future for him in a totalitarian state where minority groups were constantly being discriminated against, he left Croatia and went to France, where he hoped he would have an opportunity to live as a free individual. From 1967 until 1969, he was employed by the Michelin Tire Co.

6. On Decembe r 2, 1969, Petar Matanic arrived in the United States of America. He worked for a short period of time for Phelps-Dodge in New York City. He then worked continuously up until March of 1976, for Horn Construction, when he was laid off because of a slowdown in the construction industry. Petar

is single and presently resides in Yonkers, New York. On August 10, 1976, Petar Matanic became a citizen of the United States.

7. The defendant is an honest, trust-worthy and reliable individual, who has an excellent reputation in the Croatian community. He is a former soccer star and presently the manager of the Croatian soccer team that participates in the German-American league. He is very active in all functions of the Croatian community and regularly attends Sts. Cyril and Methodius and St. Raphael's Roman Catholic Church and the Croatian Center located at 41st Street, in New York City. The defendant has never been arrested at any time or at any place in his life.

8. Deponent has communicated with Father Slavko Soldo, Krunoslav Masina and Vice Loncar, who have indicated to me that the defendant is a non-violent person and will faithfully appear at Court, as required, and would not pose a threat to the community, if released on bail. I also refer to the affidavit of co-counsel, Paul Bergman, submitted in support of this application, setting forth his interviews with members of the community concerning our client.

9. Defendant's background supports the conclusions that he should be released on bail. Deponent respectfully refers to the supporting affidavits of Marijan Gabelica, Father Mladen

Cuvalo, Anthony Barulich, Ante Gojceta and Stven Ivkosic, annexed to the moving papers of co-defendant Busic.

10. Deponent also asks the Court in determining the conditions of release of Petar Matanic, to seriously consider the intrusion of a government agent, James O'Brien, into the deliberations of counsel and the defendants in this case. This alarming factor has instilled in the mind of our client, the fear that he cannot communicate with counsel in privacy away from government informers and undercover agents. It is critically important that defendant be able to communicate with his counsel in aid of his defense.

11. Counsel respectfully submits that the posting of collateral, coupled with the stringent conditions of release suggested by co-counsel, would adequately assure that the defendant, Petar Matanic, would pose no danger to the community and would return to Court when required.

12. Counsel respectfully joins in the memorandum of Points and Authorities in support of the motion for reduction of bail submitted on behalf of the defendant, Zvonko Busic.

MARTIN ERLICHMAN

Sworn to before me this
8th day of November, 1976.

LEON SILVERT
NOTARY PUBLIC, State of New York
No. 30-3573225
Qualified in Nassau County
Commission Expires March 30, 19 77

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
-against-	:	Judge Bartels
ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC,	:	76 CR 602
	:	AFFIDAVIT IN SUPPORT OF APPLICATION FOR BAIL REDUCTION
Defendants.	:	

----------X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Paul B. Bergman, being duly sworn deposes and says:

I am counsel, along with Martin Elefant, Esq. for Petar Matanic. I make this affidavit in support of Mr. Matanic's application for reduction of bail.

During the past week, I have spoken with nearly a dozen of Mr. Matanic's friends and business associates in an effort to acquaint myself with Mr. Matanic's reputation and standing among the people who know him. In a word, I have sought to determine what manner of man he is as he is seen through their eyes.

I had anticipated, before speaking with them, the usual polite remarks about his character and personality. Instead, I was met with a virtual outpouring of respect and

love. Moreover, in no instance were these people reluctant or unstinting of their praise of his gentleness and integrity. This was surprising, considering the seriousness of the charges against him and the wide publicity which has been given to the case. They were completely forthcoming.

Some of them, such as Ante Grbesa, expressly remarked about his nonviolence. Indeed, while I was speaking with Mr. Grbesa, his wife, Moira, insisted on emphasizing the point that Mr. Matanic was "just a wonderful person who wouldn't do anything to hurt anybody." Everyone I spoke to found it inconceivable that Mr. Matanic would purposely harm another person.

Moreover, these people had no doubt that, if released on bail, Mr. Matanic would honor his commitments and that he would obey the strict letter of whatever bail restrictions were placed on him.

Thomas Samargi also described Mr. Matanic as a "wonderful human being" and when asked if he doubted that Mr. Matanic would be present for this trial, said, "Hell, no. He wouldn't run away." This belief in Mr. Matanic's deep sense of responsibility and integrity was echoed by Rocco Buono, the shop steward at the Horn Construction Corp. where Mr. Matanic worked for many years before being layed off. Paul Sindric, another person with whom I spoke, told me that Mr. Matanic is "totally trustworthy", and Mile Sucic, whose 10 year old son idolizes Mr. Matanic, echoed the opinions of everyone: "A very good, honest guy."

There were no reservations expressed, no hedging of feeling and no caveats; he is genuinely loved and respected by the people who know him well.

_____

Paul B. Bergman

Sworn to before me this

day of November, 1976

_____

TRP:BES:rd
F#

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

-against-

ZVONKO BUSIC, JULIENNE BUSIC,
PETAR MATANIC, FRANE PESUT,
and MARC VLASIC,

Defendant.

- - - - - - - - - - - - - - - - - - - X

76 CR 602

GOVERNMENT BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR REDUCTION OF BAIL

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Barry E. Schulman,
Assistant U.S. Attorney,
(Of Counsel).

PRELIMINARY STATEMENT

Defendants Zvonko Busic, Julienne Busic, Petar Matanic, Frane Pesut, and Marc Vlasic were arraigned pursuant to a complaint charging the defendants with violations of 49 U.S.C. §1472, §1473 on September 12, 1976 before the Honorable Simon Chrein, United States Magistrate, Eastern District of New York. Bail was set in an amount of One Million Dollars ($1,000, 000.00). Thereafter on September 21, 1976 a Federal G-5 returned an indictment in which the defendants were charged with two counts of air piracy in violation of Title 49 United States Code Section 1472(i) (including air piracy that resulted the death of another person) and one count charging conspiracy to commit air piracy in violation of Title 18, United States Code, §371. The case was assigned to the Honorable John R. Bartels, District Court Judge, Eastern District of New York and at an arraignment on September 27th, 1976 bail was continued in the above-mentioned amount. Defendants now move for reduction of bail pursuant to Rule 46 of the Federal Rules of Criminal Procedure and Title 18 United States Code Section 3146.

STATEMENT OF FACTS

I. Generally

On September 10, 1976 Trans World Airlines Flight No. 355 enroute to Chicago from LaGuardia Airport, Queens, New York, was hijacked by Zvonko Busic, Julienne Busic, Marc Vlasic, Frane Pesut and Petar Matanic. A note given the flight attendant by Zvonko Busic read as follows:

> "1. This airplane is hijacked.
> 2. We are in possession of five gelignite bombs, four of which are set in cast-iron pans, giving them the same kind of force as a giant grenade.
> 3. In addition, we have left the same type of bomb in a locker across from the Commodore Hotel on 42nd St. To find the locker, take the subway entrance by the Bowery Savings Bank. After passing through the token booth, there are three windows belonging to the bank. To the left of these windows are the lockers. The number of the locker is 5713.
> 4. Further instructions are contained in a letter inside this locker. The bomb can only be activated by pressing the switch to which it is attached; but caution is suggested.
> 5. The appropriate authorities should be notified from the plane immediately.
> 6. This plane will ultimately be heading in the direction of London, England."

Thereafter defendant, Zvonko Busic displayed a "dynamite vest", which appeared to be dynamite with wires connecting it to a detonation switch. Similarly defendant Marc Vlasic and defendant Frane Pesut displayed "pot bombs" each approximately nine inches by four inches and wrapped

with tape. Wires came from the pot to a handheld detonation switch. Defendant Petar Matanic alternately kept his hand in his pocket indicating that he had some sort of firearm or carried one of the "pot bombs".

The hijackers demanded that the 727 fly directly to Iceland and thereafter to Paris where leaflets were to be dropped from a rear door and cockpit windows. The pilot after considerable and heated argument was able to convince the hijackers that the 727 did not have the necessary fuel or navigational equipment to fly directly to Iceland. It was agreed that the plane would be allowed to make fueling stops in Montreal, Quebec and Gander, Newfoundland. In Gander the hijackers permitted 33 hostages to deplane but insisted that the remaining passengers participate in the transatlantic crossing despite the obvious dangers present from the absence of proper navigational equipment.

In Paris the hijackers required the passengers to stand for hours in a tight group around the individuals holding the "pot bombs". On several occasions during this period the hijackers screamed that they would blow up the plane and all its passengers if their demands were not met. Passengers were required not to speak and had to ask permission to leave to perform essential bodily functions. On occasion this permission was denied by the skyjackers.

In New York the live bomb referred to in the aforementioned "hijack letter" was located in a locker in the busy Grand Central Station. During attempts to render said device ineffective, Policeman Brian Murray was killed and 3 other police officers critically wounded.

In Paris, French Officials offered the hijackers three choices:

1. Surrender and be executed by French authorities.
2. Surrender to be turned over to Yugoslavian authorities.
3. Surrender and be turned over to American authorities.

Faced with these 3 alternatives the defendants chose the third and least onerous choice.

On September 12, 1976, the defendants were flown to John F. Kennedy Airport, Queens, New York, and arrested by agents of the Federal Bureau of Investigation.

II The Defendants

Zvonko Busic: Defendant Zvonko Busic has been identified as the spokesman for the hijackers. He is married to Defendant Julienne Busic. Defendant has admitted that he personally arranged for the purchase of the 5 airline tickets used by himself and the 4 other defendants and that the skyjacking was the result of considerable planning. Busic stated after his arrest that the Croatian cause has received little or no publicity and he has become "desperate". Prior to the hijacking he was unemployed and has lived in the New York area for approximately one year. The only family he has in this locale is his wife Julienne Busic presently incarcerated at the Federal Metropolitan Correctional Center in New York. He apparently has no substantial holdings in this locale or elsewhere. He has 2 prior arrests for crimes involving violence and firearms.

Petar Matanic: Defendant Petar Matanic is single and has been unemployed since March of 1976. He emigrated to this country in 1969. Defendant states that the desire to see Croatia as a free and independent country

has been one of the most important goals in his life and has stated that he was a willing participant in the skyjacking. During the skyjacking he held a "pot bomb" on several occasions and menanced passengers by keeping a hand in a pocket indicating he had a weapon.

Frane Pesut: Defendant Frane Pesut has lived in Fairview, New Jersey for only one year and 3 months. He is single and has only one relative living in the United States, a sister, Mrs. Mitzi Evceg, in Cleveland, Ohio. He arrived in the United States in 1972 and is a resident alien. He has been employed one year as a machine operator. Defendant Pesut held a "pot bomb" in the back of the plane during the entire course of the skyjacking. In preparation for the skyjacking the defendant informed his landlord that he would be moving at the end of the month. Defendant Pesut has been arrested in Cleveland, Ohio for illegal possesion of a weapon.

Marc Vlasic: Defendant Marc Vlasic is single and has never been married. He arrived in this country in 1969 and is an alien resident and has lived at his present address for only one year. He has stated that the skyjackers

wanted to do something that would attract both domestic and international attention to gain publicity for their movement as the peaceful methods used in the past had not provided them with enough publicity. He apparently is self employed sporadically as a house painter. During the course of hijacking he is allegeded by passengers and crew to have made continuous threats. Further he continually ordered passengers about demanding complete obedience. He has been arrested for sexual assault against a maid in one of the houses he was painting.

Julienne Busic. Defendant Julienne Busic is the wife of Defendant Zvonko Busic. She and her husband have lived in New York for just over a year. Her parents live in Oregon. The Busic's have lived a highly migratory existence over the last several years. Defendant was employed as a teacher during the past year, but appears to have been unemployed at the time of the skyjacking. In 1972 defendant was arrested and expelled from Yugoslavia for demonstrating on behalf of the Croatian cause.

ARGUMENT

POINT I

THERE IS NO RIGHT TO BAIL IN A CAPITAL CASE

Bail in a capital case is controlled by §3148 of Title 18 United States Code which reads in pertinent part as follows:

> §3148. Release in capital cases or after conviction
>
> A person (1) who is charged with an offense punishable by death...shall be treated in accordance with the provisions of section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist...the person may be ordered detained. (emphasis supplied)

In Carlson v. Landon, 342 U.S. 524, 545-546 (1952) the Supreme Court held that there is not a right to bail in all cases. In that case the Supreme Court had the opportunity to specifically comment on the application of the 8th Amendment in capital cases.

> "The bail clause was lifted with slight changes from the English Bill of Rights Act. In England that clause has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any

> different concept. The Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country. Thus in criminal cases bail is not compulsory where the punishment may be death. Indeed, the very language of the Amendment fails to say all arrests must be bailable." (Emphasis supplied) (at pages. 545-546)

Defendants are charged with committing air piracy under §1472(i) of Title 49 United States Code the commission of which offense resulted in the death of a New York City Police Officer. §1472(9)(1)(B) expressly provides that whoever violates said Section shall be punished---"if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life." It is clear that the conviction under Count One of this indictment would permit imposition of the death penalty. As such, bail procedures in this case are controlled by Title 18, United States Code, Section 3148 which permits the Court to deny bail to the defendants. The question of whether defendants falling within this Section should be released on bail has been found to rest in the sound discretion of the Court. United States v. Baca, 444 F.2d 1292 (10th Cir. 1971) cert. denied, 92 S.Ct. 347, 404 U.S. 979, 30 L.Ed. 2d 294.

The nature and circumstances that the Court shall look to in determining the conditions of release are codified

in Title 18 United States Code Section 3146(b) which reads as follows:

> (b) in determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

Inherent in the nature and circumstances of the offense charged is whether or not a weapon was used, Hodgdon v. United States, 365 F.2d 679, 687 (8th Cir. 1966) cert. denied 385 U.S. 1029. In addition the courts traditionally look to the maximum sentence, especially if it is the type of offense which rarely results in probation and therefore, greatly increasing the possibility of flight. In cases falling within the ambit of §3148, as this one, two additional factors are to be weighed. If risk of flight or danger to any other person or to the community is believed to exist, the defendant may be ordered detained.

POINT II

UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE THE BAIL SET IS NEITHER EXCESSIVE NOR UNREASONABLE

As already discussed above, the court in the case at bar could deny bail and detain the defendants. The Court has instead chosen to set bail at one million dollars ($1,000,000). Under the facts and circumstances set forth to the court such bail is not unreasonable. It is interesting to note that the Courts in the Eastern District of New York have set bail in this amount in Non-capital cases where the risk of flight was believed great (eg. United States v. Rossi, 73 CR 164) Nor is bail considered excessive merely because the defendant is unable to meet it financially. White v. United States, 330 F.2d 811, 814. (CA 8th, 1964), cert. denied, 379 U.S. 855.

The nature and circumstance of the offense charged is extremely grave. Defendants hijacked an airplane, threatened, demeaned, tormented, and endangered the lives of its crew and passengers. A bomb planted in New York, by the defendants in furtherance of this skyjacking killed a New York City Police Office and mangled three others. As a result defendants face a possible death penalty and a probable sentence of life imprisonment. Literally hundreds of witnesses could testify against the defendants and most of the defendants

have made partially or completely inculpatory statements after being advised of their rights.

The defendants to an individaul are unusually rootless in their way of life. All have been either sporadically employed or unemployed over the last several years. None have families living in the area and most have no family in the United States at all. None have appeared to begun a family nor settled in a permanent habitat. Most have changed residences within the last 2 years. Not one of the defendants possess any substantial assets in the community, although most are well educated. Most have arrest records for violent, if petty, crimes.

The factors of mental condition, risk of flight and danger to the community must be taken in light of all the defendants fanatical devotion to their cause. During the hijacking and thereafter in interviews with the defendants each defendant expressed the feeling that the cause of Croation independence was the most important goal in their life. Most indicated that they were willing to undergo years of deprivation and imprisonment for the cause, some in fact have indicated that they were willing to die for their cause. Contrary to defendants' contention that they willingly returned to the United States to accept punishment,

it is submitted in two foreign countries took the less repugnant path of returning to the United States. Nor is it unusual for a person involved in politically motivated crimes to flee (i.e. Mark Rudd, Timothy Leary, H Rap Brown, and Eldridge Cleaver, to name a few). Clearly the defendants recognize that they cannot serve their cause if they are executed or imprisoned for a period of years. What better way to garner publicity than to become a fugitive or, even to commit some one last desparate and suicidal act. Defendants obviously have sufficient knowledge and resources to create another tragedy.

CONCLUSION

The motions of defendants Zvonko Busic, Julienne Busic, Petar Mantanic, Frane Pesut and Marc Vlasic pursuant to Rule 46 of the Federal Rules of Criminal Procedure and Title 18 United States Code, Section 3146 to reduce the bail presently imposed should be denied.

Dated: Brooklyn, New York
November , 1976

Respectfully submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Barry E. Schulman
Assistant U.S. Attorney
(Of Counsel)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- : 76-CR-602

SVONCO BUSIC, JULIANNE BUSIC, PETAR MATANIC, FRANE PESUT, MARK VLASIC, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

November 10, 1976
4:30 p.m.

B e f o r e :

HONORABLE JOHN R. BARTELS, U.S.D.J.

HENRY SHAPIRO
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: EDWARD KORMAN, ESQ.
Chief Assistant U.S. Attorney
-and-
THOMAS PATTISON, ESQ.
BARRY SCHULMAN, ESQ.

MESSRS. WILLIAMS, CONNOLLY & CALIFANO
Attorneys for Defendant S. Busic

BY: MICHAEL TIGAR, ESQ.
-and-
PIERCE O'DONNELL, ESQ.
Of Counsel

LEGAL AID SOCIETY
DAVID RUDOLPH, ESQ.
-and-
MICHAEL ASEN, ESQ.
Attorneys for Defendant J. Busic

JEFFREY WISENFIELD, ESQ.
Attorney for Defendant Vlasic

PAUL BERGMAN, ESQ.
-and-
MARTIN ELEFANT, ESQ.
Attorneys for Defendant Matanic

IRWIN ROCHMAN, ESQ.
Attorney for Defendant Pesut

Also present:

MARTIN OZER, ESQ.

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MR. PATTISON: I think it might clarify the record if the demand note found in the locker were made a part of the record.

THE COURT: Why don't you do that and I will postpone my decision for two days.

MR. PATTISON: And also Busic's statement and the statement of each of the parties involved here.

THE COURT: Put that in the record. It should have been done before and I will render a decision in the next three or four days. I am trying a case which makes it impossible for me to stop. I will, if you give me those statements of Busic which you say you have, decide the case one way or the other. In any event, this Court will retain jurisdiction of the conspiracy.

Do you have any other motion? It is ten minutes to six. I have another matter pending.

MR. TIGAR: We have a bail motion.

Mr. Rudolph will address the Court first.

THE COURT: Each of you want to address the Court?

MR. RUDOLPH: We do.

THE COURT: I read the briefs of everyone. Are you going to address the Court,individually?

MR. RUDOLPH: I would like to speak to the Court as to Julianne Busic's position.

THE COURT: Step up.

MR. RUDOLPH: Thank you, your Honor.

I know that your Honor has read my affidavit. I don't want to go back into the details. I would like to highlight very very briefly a few things that I think are extremely relevant to the issues before the Court right now. I think first of all, we have to look at her background in terms of what she has done with her life, the type of schooling she has had, the type of degrees she has earned, and the type of jobs that she has held.

THE COURT: I do not know if it is all true. We cannot go back to the date of her birth. What is more important, what are her roots here? The possibility of flight and how serious is the nature of the crime and is she going to prese nt a danger to the community, are the important issues. I do not want to go back to her early days of her education. I read that. I do not know how pertinent it is.

MR. RUDOLPH: I think it is pertinent to show what kind of character she has.

THE COURT: It is a very difficult motion

to decide. Very frankly, I can say this is my own opinion. I do not believe that any of these defendants are the type of persons that would with a weapon injure any individual on the street or resort to any personal violence, but that is just not the only test here by any means.

MR. RUDOLPH: It is relevant as to whether she poses a danger to anyone in the community.

THE COURT: I read all the supporting affidavits with respect to all of these defendants, that they were nonviolent people. We can proceed from that basis.

MR. RUDOLPH: Very well, if that is conceded, that is fine.

I think the conclusion that we have suggested to assure her return, amounts to virtually a house arrest. We have asked for a designated place of abode, we have asked for a designated third party to be responsible, we have asked for a reporting requirement, if the Court wishes an employment requirement. We are not asking for an unstructured release.

Moreover, Judge, and perhaps most importantly, in addition to those conditions with respect to Mrs. Busic, her parents have flown in from Oregon for the

purpose of this bail hearing and are in the courtroom today. Her father is a professor of classic Greek, her mother teaches in a local high school, and they are willing to post as security the amount of $50,000, which represents the sum total of their entire life's work. I think the posting of such a collateral for Mrs. Busic, coupled with one or more of the requirements suggested by Mr. Tigar in his able brief, would more than adequaitely vindicate the interest of the Government in assuring her return and would also vindicate her rights to be released on bail pending the trial in this case, and to meet with counsel so that her defense can be presented in its most effective form.

I suspect that based upon the nature of the investigation conducted by the pretrial services, and I know your Honor has the report, that they take the position which is somewhat in line with the position that I have recommended. I think that should carry substantial weight. They are an independent agency --

THE COURT: The weight I give those recommendations depends upon my own experience and the seriousness of the offense. I do not agree at all that they are in the same position as I to decide

whether or not there shall be bail. By no means do I agree to that.

MR. RUDOLPH: I by no means meant to suggest that.

THE COURT: This memorandum is very helpful and I have looked at it.

MR. RUDOLPH: I merely meant to suggest they are not in an adversary position as a defendant would be.

THE COURT: They are not.

MR. RUDOLPH: That was my only point. I just think that the conditions that were suggested, and I am sure the pretrial services might have other conditions or other alternative conditions that could be worked out with the posting of the bail suggested, namely, by collateral as provided by her parents and that would assure her return to court.

I would ask you to consider that and weigh her background and her character in reaching your determination. I thank you.

MR. BERGMAN: May I be briefly heard on behalf of my defendant, Petar Matanic?

THE COURT: Yes.

MR. BERGMAN: I know your Honor has read

the affidavit of Mr. Elefant and my affidavit that were submitted on behalf of Mr. Matanic. I would add this: If there is to be bail in this case, I ask that you simply look in the courtroom and you will see friends, neighbors, who have the highest regard, not only for Mr. Matanic, but for every defendant sitting at this table. The scene has been repeated each of the three days we have been in the State Court. I cannot impress more upon your Honor --

THE COURT: Do they have bail in the State Court?

MR. BERGMAN: They have been reserved in the State Court. In a sense, I suppose the guidance is being seeked from --

THE COURT: These defendants have to be present in the State Court, if no bail has been provided.

MR. BERGMAN: I am not talking about the presence of the defendants in the State Court, I am talking about the presence of upwards of 50 or 60 people, their friends, their neighbors, who have come to see justice done in the United States.

THE COURT: Wait a minute. Justice is going to be done in the United States.

MR. BERGMAN: No question.

THE COURT: You can be guaranteed of that. There are speedy trial requirements which indicate how concerned we are that no one be detained too long before a trial. I do not think you will find that in Yugoslavia or Croatia.

MR. BERGMAN: That is why these people live in the United States.

THE COURT: Very well.

MR. BERGMAN: My point is that they have been here to comfort the defendants and show them that they have friends. If you look at the papers that have been submitted on behalf of all the defendants, that cannot escape the Court. What I suggest is that the Court give some thought to the motion by the defendant Matanic and his co-defendants, to seek members of the community out to post adequate security which would satisfy the Court, and I do not think that is an empty suggestion at all in this case. We are not dealing with radicals of the type mentioned in the Government's brief. The people here seek --

THE COURT: I do not know if they called them radicals.

MR. BERGMAN: The Government listed Mark

Rudd, who I do not think bail was ever set for, and defendants brought before the Court on drug charges. This is not that kind of a case. If one person in the Croatian community has to put up his home or life savings in behalf of one defendant at this table, flight would not be an issue, because no defendant here would flee in order to allow a fellow countryman of his to suffer the consequences of that flight.

THE COURT: Very well. Who is next?

MR. TIGAR: Your Honor, I will not repeat the arguments in the brief. I won't tax your Honor's patience with that. I simply want to make a request of the Court. Since we filed our affidavits, we have contacted -- because we have had some discussions with Mr. Pattison in the last 24 hours -- twenty people in the Croatian community, each of whom is willing to put up his personal residence as security for the appearance of the defendants in this proceeding. I have given Mr. Pattison a list so he can conduct background checks on those people and we are in the process of getting appraisals for those properties.

THE COURT: Do you want me to reserve decision?

MR. TIGAR: I would suggest that you reserve

decision and give us until Monday to put those matters before your Honor. It seems to me that picking up on Mr. Bergman's point, if indeed the Croatian community, the 25,000 parishioners, are willing to say "We trust these people, we trust them with everything that we built with our hands when we came to this country," and that would be a significant factor in your Honor's reaching a decision.

THE COURT: Let me hear what the Government has to say.

MR. SCHULMAN: As we pointed out in our brief, and I am sure as the Court stated, the defendants can legitimately be denied bail. The Court has shown a great deal of leniency and liberality in setting bail in the amount of one million dollars was quite adequate as far as bail is concerned, was quite generous, and I would point --

THE COURT: I didnot set it.

MR. SCHULMAN: Your Honor continued the bail.

THE COURT: I continued it.

MR. SCHULMAN: I would like to point out that we have defendants in noncapital cases in this courthouse who have had bail set in excess of one million dollars. In United States v. Rossi, I

believe the bail was $3 million, and when it appeared that Mr. Rossi might make that bail, it was raised to $5 million.

We have a very serious crime here, your Honor.

I would like to read, if I may, a statement of Mr. Busic upon returning to the United States.

He stated: "We are proud of what we did. Don't be surprised if you hear about other attacks in the future. We are defending a just cause, yet we are with handcuffs on our writs."

I submit that the danger to the community is paramount in that statement, because there is nothing to indicate that these defendants will not go out and do something similar again, when they leave this courthouse, should they ever make bail. I think the million dollars possibly will insure that a repetition of this will not occur.

I would point out to your Honor that United States v. White points out that it is not excessive merely because a defendant is not able to meet it.

As indicated by Mr. Tigar, they may make it. Certainly when members of families have their homes at stake, we can then say possibly there won't be a repeat. If we have such dedicated individuals

as in their case it might very well be that these defendants will find that they should repeat the act. In jail they cannot. Free, they might.

I might point out that numbers of passengers were abused on that plane. These individuals are all unusually ruthless for educated people. With the exception of Busic, none have families in the United States. Her family is in Oregon. They had the choice of being executed in Paris or returning to Yugoslavia and they chose to return here. That was the least painful of their alternatives. Three of the defendants have criminal records in the United States involving guns, rape --

THE COURT: Which one is that?

MR. SCHULMAN: Mr. Vlasic.

MR. WISENFIELD: When is an arrest considered a conviction?

MR. SCHULMAN: I am sorry, it was an arrest.

In addition, Mr. Pesut notified his landlord that he was going to terminate his apartment at the end of the month, just before this hijacking occurred. I believe that indicates a fair certainty that he did not anticipate continuing with whatever roots he had here in this community.

THE COURT: Anything further?

MR. SCHULMAN: No, your Honor.

T6HS/flm. [53]

MR. WISENFIELD: May I just briefly comment on the allegations made as to Mr. Vlasic. It is true that Vlasic had a complaint made against him and the circumstances were that while he was on a job with another fellow worker, a maid in the household approached him and evidently there was some sexual contact of some sort that didn't work out satisfactorily to her, she made a complaint the next day. Mr. Vlasic was charged with a crime and it was dismissed.

THE COURT: I think I have heard enough.

The point is I would be less than frank with you if I did not give you a decision now.

This is an application by the defendants pursuant to Rule 46 of the Federal Rules of Criminal Procedure and 18 U.S.C. 3146 for an order reducing each defendant's bail and releasing them from confinement pending trial. The indictment charges violations of 49 U.S.C. Section 1472(i)(2) (air piracy and attempt to commit air piracy); and 18 U.S.C. 371 (conspiracy to commit air piracy). Bail was set in the amount of $1 million for each defendant. All of these defendants are Croatians who have emigrated to America, and are alien residents. In support of the application for reduction of bail for these defendants, an exhaustive brief

has been submitted together with eight affidavits testifying to the good character and reliability of the defendants and in particular the defendant Zvonko Busic and his wife Julienne Busic. In addition, the papers show that there have been six offers made by fellow Croatians to provide living accommodations for the defendants and four additional offers to provide third-party custodians for these defendants until the trial.

Let us now consider Zvonko Busic and Julienne Busic. Zvonko Busic emigrated to this country in December of 1969 and worked in Cleveland, Ohio, until April of 1971. He then returned to Europe and married Julienne, his present wife, in May of 1972. In August of 1972 both returned to Cleveland where they remained until May of 1973, at which time they moved to Oregon. In March of 1975 both moved to New York City where Zvonko worked as an elevator operator until March of 1976 when he became unemployed. Zvonko had two prior brushes with the law in Cleveland, the first in March of 1971 and the second in June of 1971. The first arrest arose out of an altercation but the charge was dismissed. In the second arrest he was charged with carrying an illegal weapon and with disorderly conduct and was

fined $200. As a result his "green card" and other travel documents were seized.

Julienne Busic, Zvonko's wife, was arrested in 1972 and expelled from Yugoslavia. She and her husband Zvonko have lived in New York for just over a year. Her parents live in Oregon. While she was employed as a teacher during the past year, she apparently was unemployed at the time of the hijacking.

On September 10, 1976, a TWA plane en route to Chicago from LaGuardia Airport was hijacked by Zvonko Busic, Julienne Busic, Marc Vlasic, Frane Pesuit and Petar Matanic. All the alleged hijackers entered the plane with tickets previously purchased. Apparently Zvonko Busic was the leader and is charged with delivering a threatening note to the pilot and displaying a "dynamite vest" with a detonation switch. According to the Government, the note read as follows:

"1. This airplane is hijacked.

"2. We are in possession of five gelignite bombs, four of which are set in cast-iron pans, giving them the same kind of force as a giant grenade.

"3. In addition, we have left the same type of bomb in a locker across from the Commodore Hotel

on 42nd St. To find the locker, take the subway entrance by the Bowery Savings Bank. After passing through the token booth, there are three windows belonging to the bank. To the left of these windows are the lockers. The number of the locker is 5713.

"4. Further instructions are contained in a letter inside this locker. The bomb can only be activated by pressing the switch to which it is attached; but caution is suggested.

"5. The appropriate authorities should be notified from the plane immediately.

"6. This plane will ultimately be heading in the direction of London, England."

The hijackers compelled the pilot to fly the plane to Paris and to stopon its way at Montreal, Canada, and Gander, Newfoundland, for refuelling. In Gander, the hijackers permitted 33 hostages to deplane but compelled the remaining 52 passengers to participate in the transatlantic crossing despite the absence of proper navigational equipment. The Government charges that the defendants Marc Vlasic and Frane Pesut displayed "pot bombs" and the defendant Petar Matanic appeared as though he wascarrying a firearm in his pocket.

As to Petar Matanic, Petar Matanic emigrated

to this Country in 1969. He has been unemployed since March of 1976.

Frane Pesut arrived in the United States in 1972. He is a resident alien, single, and has only one relative living in the United States, a sister. He has been employed for one year as a machine operator. During the hijacking he held a "pot bomb" in the back of the plane. He has been arrested in Cleveland for illegal possession of a weapon.

Let us consider now Marc Vlasic. Marc Vlasic arrived in this country in 1969. He is a resident alien and has lived at his present address for only one year. He is single and is self-employed as a housepainter.

Now, the Court is well aware that the defendants are presumed to be innocent and that a pretrial detainee is not in a position of a convict. Consequently, generally speaking, every effort should be made to release a defendant before trial not only to eliminate incarceration per se, but also to permit him freedom for preparation of his trial. On the other hand, where a capital offense is involved and punishment may be death, it is clear that the Court must consider the danger and risk to the community if the accused is released on bail. Section

3148 of Title 18 of the United States Code specifically provides that where a person is charged with an offense punishable by death, the Court may order that person detained if it has reason to believe that no one or more conditions of release would reasonably assured that the person would not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, then the Court may order the detention of that person, that means without bail.

The federal offense for which these defendants are accused is a very serious one. The nature and circumstances of the offense charged are extremely grave. None of the defendants appeared to have any permanent roots in this district or in this country and all are resident aliens.

(continued next page)

Obviously, the seriousness of the offense charged and potential penalty that would be incurred on conviction would serve as a strong inducement for flight. Moreover, all have indicated by their past offenses that the important goal in their lives is to create publicity for Croatian independence. It seems to this Court to be quite irrational to commit an offense against a host country that has provided them with refuge. Already one person has met his death and may have been kidnapped. On balance, it is this Court's considered opinion that it would be dangerous and risky to release the defendants, not only because there would be such a strong inducement to flee, because there is a strong possibility of danger to the community since in the Court's opinion their motivation to publicize Croatian independence in America has somewhat affected their rationality.

As I understand it, Mr. Busic has already sent a note that this effort to publicize Croatian independence could possibly be repeated. Subsequently, their motivation could easily lead them to repeat the serious offense for which they are now charged or a similar offense equally dangerous

to the community.

The application to reduce the bail is denied.

I will make every effort, if the case is still here, that they have access to their attorneys.

MR. RUDOLPH: May I address the Court briefly? In your Honor's decision you referred to all of the defendants as resident aliens. As my affidavit indicated in point four, Miss Julianne Busic was born in Oregon in 1948, her mother's family has lived in the United States for approximately -- in Oregon -- for approximately one hundred years, her father's family has lived in Oregon for seventy-five years. She is a full citizen of this country.

THE COURT: You are quite right. I made a mistake.

MR. BERGMAN: Simply for the record, Mr. Matanic is a nationalized citizen of the United States. He has lived in the New York area since 1969, when he came to this country.

THE COURT: I did not know that. He is a citizen?

MR. BERGMAN: He is. Moreover, he has been steadily employed ever since the date he set foot in this country. It was his misfortune, because

of the vicissitudes of the economy, that he was laid off, but he has always worked continuously.

THE COURT: I have made my decision.

I may consider some modification as far as Mrs. Busic is concerned, but not tonight. That is my decision. You can go to the Court of Appeals for such relief that they may wish to give you.

MR. TIGAR: May I make this list of people willing to put up their houses part of the record?

THE COURT: Yes, I think you should.

Do you have the amounts?

MR. TIGAR: This is simply a list. We are in the process of getting appraisals.

THE CLERK: So marked as Defendants' Exhibit A.

1. Mr. Zvonimir Misevic, 1524 Nepperhon Avenue, Yonkers, New York 10703. Tel: (914) 969-6315 .

2. Mr. Miljenko Pinjusic, 432 9th Street, Fairview, New Jersy 07022. Tel: (201) 941-1456.

3. Mr. Andjelko Lozina, 531 Ashford Ave., New York 10502, Ardsley. Tel: (914) 693-2295.

4. Mr. Miho Miketic, 4834 59th Street, Woodside, New York 11377. Tel: 424-4536.

5. Mr. Jozo Ivancic, 69 Merrick Ave., East Meadow, New York 11554. Tel: (516) 794-9112.

6. Zarko Luburic, 97 Rosedale Ave., Hastings/Hudson,

New York 10706. Tel: (914) 478-2898.

7. Marko Kavelj, 19 Garfield Ave., Farmingdale, L. I., New York 11735. Tel: (516) 293-2073.

8. Vlado Zimic, 133 Grant Ave., Brooklyn, New York 11208. Tel: (914) 969-6315.

9. Ante Grbesa, 902 Monroe Street, West Hempstead, L. I., New York 11552. Tel: (516) 485-5913. (for Petar Matanic).

10. Ante Kusturic, 12240 135th Ave., Ozone Park, New York 11420. Tel: (212) 738-2094.

11. Stipe Basic, 636 Martin Avenue, Oradell, New York 07649. Tel: (201) 265-7389.

12. Joseph Setka, 31-58 38th Street, Long Island City , New York 11103. Tel: 728-7318.

13. Joseph Knezevic, 43-42 Golden Street, Flushing, New York 11355. Tel: 353-0069.

14. Andrija Sario, 54 East Brinkerhoff Avenue, Palisade Park, New Jersey 07650. Tel: (201) 947-7778.

15. IvanJukic, 154-11 12 Road, Whitestone, New York 11357. Tel: 767-3355.

16. Steve Ivkosic, 901 2nd Street, Peekskill, New York. Tel: (914) 592-6040.

17. Ivan Gale, 218 First Street, Yonkers, New York. Tel: (914) 591-6133.

18. Bozidar Morovic, 212-09 28 Avenue, Bayside, New York. Tel: 631-1801.

19. Vinko Kuzina, 1460 15th Street, Fort Lee, New Jersey 07024. Tel: (201) 947-9754.

20. Mile Pesa, 174 Cromwell Avenue, Staten Island, New York 10304. Tel: 979-5604.

MR. RUDOLPH: So the record is clear, am I correct in my impression that your Honor is going to reconsider --

THE COURT: You are not correct in that impression. The decision was clear as I could make it. I said that I might reconsider later a subsequent application if it is here for special privilege, but not now. Let us not prolong this unnecessarily.

MR. RUDOLPH: I just wanted to make sure my understanding was correct.

THE COURT: She is in a little di-ferent category as a citizen of the United States and her father and mother are willing to put up bail, and her part was somewhat less important than the others--

MR. ASEN: I think that the record should reflect --

THE COURT: I thought we had only one counsel.

MR. ASEN: I want the record to reflect that both parents are here in court.

THE COURT: It was already stated by Mr. Rudolph.

MR. ROCHMAN: We still have the waiver of the possible speedy trial act and we have discussed it with Mr. Pattison --

THE COURT: That will be moot if I decide this motion of change of venue in favor of the defendants. You have to get your speedy trial waivers up in Buffalo, if that is so; isn't that true?

I have set December 6th down for trial. Suppose I dismiss the indictment ? Then that trial date is gone.

MR. ROCHMAN: If you dismiss the entire indictment.

THE COURT: What would you do if we held the attempt to hijack?

MR. PATTISON: We would try the case here, your Honor, and we would also of course proffer the motion that if the attempt is here, clearly the completed seizure began with the attempt as per the language of the statute.

THE COURT: I will look into the language

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- : 76-CR-602

ZVONCO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT, MARK VLASIC, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

December 6, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE JOHN R. BARTELS, U.S.D.J.

MICHAEL MIELE
OFFICIAL COURT REPORTER

[2]

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: EDWARD KORMAN, ESQ.
Chief Assistant U.S. Attorney
-and-
THOMAS PATTISON, ESQ.
BARRY SCHULMAN, ESQ.
Assistant U.S. Attorneys

MESSRS. WILLIAMS, CONNOLLY & CALIFANO
Attorneys for Defendant Z. Busic

BY: MICHAEL TIGAR, ESQ.
-and-
PIERCE O'DONNELL, ESQ.
Of Counsel

LEGAL AID SOCIETY
BY: DAVID RUDOLPH, ESQ.

JEFFREY WEISENFELD, ESQ.
Attorney for Defendant Vlasic

PAUL BERGMAN, ESQ.
-and-
MARTIN ELEFANT, ESQ.
Attorneys for Defendant Matanic

IRWIN ROCHMAN, ESQ.
Attorney for Defendant Pesut

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T1AMR2 MM:KC

THE COURT: Do you have any answer?

MR. TIGAR: I stand by the things I said before. To clarify Mr. Bergman's point, the schedule as originally set by the Second Circuit which we moved to modify, gave Mr. Korman two more weeks to get his briefs in and we moved to equalize that and equalize the opportunity to brief this matter in the Court of Appeals.

The duty to move this case along seems to me is the Government's duty. They could go to Buffalo now and obtain an indictment. The impressive thing on this record is they have decided to appeal and of course they get certain rights under 3731 and under the Speedy Trial Act if they do decide to appeal.

The point I want to stress is there are two ways which are equally important to serve the interest of the defendants in this case and that is what we are committed to doing.

I resent the idea put forward that we are playing games because we are attempting to spare the lives of five people who are indicted under a capital--

MR. KORMAN: The issue is not the death penalty.

MR. TIGAR: Precisely, because the decision of that issue lies in the U.S. Attorney and the

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Grand Jury in Buffalo. We believe that the bail your Honor's set out to be halved at this time. We have an indication by the motions filed that the defense is being conducted in an orderly and responsible way. I would ask the Court, if Mr. Korman's application is going to be granted to reduce bail as I have suggested.

If Mr. Korman will state on this record today that the conspiracy is the only part of this transaction, the only offense arising out of this transaction in which he intends to go forward, we would be ready to go to trial this morning.

MR. BERGMAN: I believe the Speedy Trial Act would require the release of these defendants nine days after their arrest. The fact that the Government is pursuing an appeal when it is clear there is venue in either one or probably two other districts in this state, and implying to the prosecution in this case ought not be to the detriment of these defendants.

Your Honor, regarding 3731, we couldn't lose sight of the fact that this is an appeal on the part of the Government, simply so this district can keep the case here in this district.

THE COURT: Are you suggesting that they have

THE COURT: You could have been proceeding here today. It is your motion to dismiss, not the Government.

MR. ROCHMAN: That's correct, but we are not obliged -- we are not obliged to proceed in a district where venue doesn't properly lie.

THE COURT: Nevertheless, that was opened to the question. You couldn't be sure that I was right or that venue doesn't exist until you have an opinion of the Court of Appeals.

MR. ROCHMAN: We have your opinion.

THE COURT: You're flattering me to think that's a final opinion.

MR. ROCHMAN: In terms of simple fairness, you should give serious consideration to the reduction of bail because of the posture of this case and what has happened.

THE COURT: Aren't these defendants incarcerated by virtue of the State Court indictment?

MR. ROCHMAN: That's correct. They are remanded without bail.

THE COURT: So what would you gain if you had a reduction of bail?

MR. RUDOLPH: There is a motion pending to reduce that bail and Judge Leff will be ruling

on that motion sometime in the next several weeks.

MR. KORMAN: Why don't they come back here then?

MR. ROCHMAN: It seems to me Judge Leff will be in a fairly better position to evaluate my request for reduction after this decision is made.

It involves what for -- what was submitted through an interpreter and that's relevant on the question of bail in the State Court. I don't think that should influence you in any way.

THE COURT: I think it should influence me. My reaction would be a question of whether or not these defendants are being improperly detained and if they are going to be retained at all events, what I do would affect you all; there is no question about that.

I have a stronger reason why I feel that common sense requires a denial of your application for bail. In the first place, a reduction of bail -- the real offense that has been committed was the air piracy of the air craft.

The conspiracy was simply the initial step towards the ultimate offense that the Government is prosecuting. To have one half of it, the conspiracy tried here and two counts of the indictment tried in

Buffalo -- it makes no sense. At all events if [26 that's going to be necessary because of the venue provisions of the statute, it would seem to me that the substantive offenses committed in Erie County should be tried first before the conspiracy count is tried, because if that's so, and there is certainly -- if there is a conviction, I would think the conspiracy count probably would be dropped completely.

I don't know, but it makes not too much sense to split this case up at this point, particularly when there is an appeal pending and a stay issued.

You are applying for an extension of that stay.

MR. KORMAN: That is correct, or a continuation of bail pending appeal which would have the same effect.

MR. WEISENFELD: There is one other change as to the character of the bail offered. The last time when we came before your Honor, there was some discussion that the money would be put up by a committee and couldn't be attributed in large amounts to any particular individuals.

We think that fact is that we have a bail offer very different than we had at the original decision, namely there are numbers of people willing

to commit their homes --.

THE COURT: That was presented last time.

MR. WEISENFELD: No, I don't --

THE COURT: I remember very distinctly you had the parents of Mr. Vlasic.

MR. WEISENFELD: That's correct, but we have gone beyond that.

THE COURT: I read in the briefs there were others who wished to put up their homes at the time. That offer was made before not giving value or names of the homeowners.

MR. BERGMAN: It may have been a half dozen people. It is well beyond that. You had said if we received --

THE COURT: I don't remember saying anything like that.

MR. BERGMAN: That you would reconsider the application.

THE COURT: No, I referred only to the wife of Mr. Busic and might consider her situation. I remember that distinctly.

MR. ROCHMAN: Nc one is suggesting you made a commitment you are not honoring. The point being raised is since you are ruling on the question of bail we have talked to a significant number of people

we didn't know about who are prepared to put up their homes, not wealthy people to assure their presence.

THE COURT: If there is going to be an indictment in Buffalo that Court should decide the bail, not this Court. I have been told there will be an indictment, if the Grand Jury -- well, there might be.

MR. KORMAN: No one is going to seek one in Buffalo, only if we are not successful on the appeal.

THE COURT: I believe that decision must be made up there and this Court will follow it. I think you ought to make an effort to accelerate this appeal.

MR. RUDOLPH: I was in touch with the Court of Appeals clerk last week, and informed they were going on vacation for two weeks beginning the 20th.

They are totally booked with criminal cases from now until then, absent showing compelling dire life and death emergency, they couldn't put this case on the calendar any earlier than scheduled.

THE COURT: I think the clerk's decision is not final and the way some of these have happened is that the application is directed to the Court. They have their own rules. I am not suggesting what they should do. I am stating that I know they have

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handled what you might describe as crisis situations [29] very rapidly involving particular strikes or things of that kind which they consider an emergency.

Now, maybe they don't consider this an emergency. In that event, then your application will be denied. But it is true these defendants have been detained almost three months.

It hasn't expired yet, but will expire sometime around December 12. At that time the three months shall have passed. Any other additional time will be chargeable to the appeal. They may be interested in that.

MR. KORMAN: We will not oppose any accelerated scheduel they seek. I told Mr. Bergman as long as this schedule was in effect any additional time should come from the Court of Appeals.

If he wants an accelerated schedule, I am prepared to go along with it.

THE COURT: It isn't much of a case is it? Your record only consists of my opinion. It's a fairly uncomplicated case.

MR. BERGMAN: If it would make any difference to the fact whether the appeal worded January 10, or before recess then we would have moved for more accelerated schedule.

THE COURT: You want a fast trial. They would have to act fast.

MR. RUDOLPH: May I suggest we defer any discussion on the bail until we determine whether or not the Court of Appeals can hear this on a crisis emergency basis and --

THE COURT: From after December 12?

MR. RUDOLPH: That's correct.

THE COURT: From there on you have detention predicated on the decision of the appeals.

MR. RUDOLPH: It would make sense to defer bail application or decision for at least several days until we determine whether or not we can get an expedited emergency decision from the Court of Appeals.

THE COURT: And at the same time you can appeal my decision on bail.

MR. TIGAR: Unless we were prepared to present additional information which under the statute would have to be presented to this Court first.

THE COURT: that's only if you feel without that, that bail would be sustained. It is possible even without that this bail may be too high.

MR. TIGAR: To be fair to the Court and orderly procedure if we have additional information

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which we intend to have we ought to present it here [31]
first.

THE COURT: On the bail, yes. I wonder if we are talking about something that will be academic if the Court of Appeals sustains my opinion and the Government acts quickly in Buffalo, then I am out of the picture.

MR. TIGAR: You are still in the picture until that happens.

THE COURT: I am going to grant the Government's application for a stay until a decision on the appeal is rendered and I am going to deny the application of the defendants for a reduction of bail.

So that's where we leave it.

MR. KORMAN: Shall we submit an order?

MR. ROCHMAN: Would you permit us to come before you pending our --

THE COURT: No. I think nothing is gained by that. I will have to wait until we get the Court of Appeals' decision. That is where your speedy trial will be obtained.

I didn't say they should grant your application. That's none of my business, but I am saying there is a possibility there.

MR. ROCHMAN: If the present schedule is

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adhered for the calls for argument during the week of January 10, which would mean, even a decision from the bench that there would be at least another month.

THE COURT: Don't you think you should bring that to the attention of the Court?

MR. ROCHMAN: There may not be an opportunity.

THE COURT: We couldn't rely on just a clerk's opinion. You have to file your affidavit and papers and if you want to be sure you get an opinion of the Court --

MR. ROCHMAN: There will be another five or six weeks before we get a resolution where these defendants will be incarcerated.

THE COURT: They will be incarcerated under State Court charges. So I don't know what you do here will be anything helpful to your defendants.

If they are going to be incarcerated without bail --

MR. TIGAR: Out of fairness one would move to the State Court judge the question of appropriate bail and he still has that under submission. You wouldn't tell us that because the State Court didn't decide you wouldn't decide and if they said that we wwouldn't be able to apply any place.

THE COURT: I am not saying that at all.

I am saying you can't be sure whether I would have any effect on it. I am not inclined for the reasons I have already given on the present record.

MR. WEISENFELD: May I correct something I said earlier? I now recognize when I said Mr. Trager's office made a commitment, I overspoke the issue of possibility of capital punishment. There was substantial indication of a personal preference of Mr. Trager not in any way a commitment or understanding, merely an indication what he might intend to do. I did misspeak to the Court and I apologize.

THE COURT: Very well.

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the annexed Affidavit and Memorandum of Points and Authorities in Support of Motion for Release Pending Appeal and Trial and upon all papers and proceedings heretofore had herein, the undersigned will move this Court before the Honorable John R. Bartels in Courtroom 4 of the United States Courthouse, Brooklyn, New York, on Monday, December 20, 1976, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 46 of the Federal Rules of Criminal Procedure and 18 U.S.C. §§ 3146, 3148, releasing the defendant Zvonko Busic from custody pending appeal and trial.

Dated: Washington, D.C.
December 13, 1976

Respectfully submitted,

Michael E. Tigar
WILLIAMS, CONNOLLY & CALIFANO
1000 Hill Building
Washington, D. C. 20006
(202) 331-5085

Of Counsel:

Edward Bennett Williams
Richard M. Cooper
Pierce O'Donnell

TO: David G. Trager
United States Attorney
Eastern District of New York

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AREA CODE 202
331-5000

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT IN SUPPORT OF MOTION FOR RELEASE PENDING APPEAL AND TRIAL

JANE E. HALL, being duly sworn, deposes and says:

1. I am a legal assistant employed by the law firm of Williams, Connolly & Califano in Washington, D. C. This affidavit is submitted in support of defendant Zvonko Busic's motion for release pending appeal and trial.

2. At the request of Michael E. Tigar, one of the attorneys defending Zvonko Busic, I personally contacted individuals who had expressed a desire to aid the defendants in posting the bail set by this Court.

3. During my interview with each such person, I asked a series of questions to confirm the nature and value of the property being offered as security for bail. For each surety, this information is set forth in the "Schedule of Real Property Offered as Security for Bail" (hereinafter "Schedule") attached to this Affidavit.

4. In connection with the aforementioned Schedule, each person serving as surety has furnished the following information: residence address, a description of the security, the price and date of acquisition, the outstanding mortgage, the fair market value, and the net worth of the security.

LAW OFFICES
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& CALIFANO
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WASHINGTON, D.C. 20006
AREA CODE 202
331-5000

5. For purposes of the Schedule, "fair market value" is based on the surety's reasonable estimation of the value of the property based on comparable property in the area and, in some instances, based on a projection from assessed valuation or an offer to purchase the property.

6. For purposes of the Schedule, "net worth of security" is the difference between the fair market value and the outstanding balance on the mortgage.

7. The total net worth of all security offered by the sureties listed in the Schedule is Five Million Thirty-Four Thousand Six Hundred ($5,034,600) Dollars.

8. In all instances, all co-owners of the property have agreed to act as surety for bail.

9. In the process of verifying the surety's willingness to pledge his property as security for bail, each surety

(a) understood that the property would be legally committed in this Court as collateral to assure the presence of one or more defendants at trial;

(b) understood that in the event that the defendant for whom the property was being posted as collateral failed to appear as required at any court proceeding, the property would be subject to forfeiture to the government and that he might lose all rights and interest in the property and be forced to leave the premises;

(c) indicated that no one has promised him, nor does he have any understanding, that in the event his property is forfeited on account of a defendant's failure to appear, his loss will be repaid by any individual, group of individuals, or organizations; and

(d) understood that if the property is accepted

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as collateral, he will be responsible for assuring the presence of the defendant at trial.

JANE E. HALL

Subscribed to before me this 14th day of December, 1976.

Notary Public

My Commission Expires September 30, 1977

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SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
1.	Mr. Vladimir Kundid Mrs. Anka Kundid	508 Palmer Ave. Mamaroneck, N.Y. 10543	Residence	$ 90,000	1975	$ 57,000	$ 120,000	$ 63,000
2.	Mr. Naletilic Vlado Mrs. Janja Valado Mr. Rade Lucic	57 Franklin St. Danbury, Conn. 06810	Residence	44,000	1971	30,000	65,000	35,000
3.	Mr. Ante Barulic Mrs. Rose Barulic	30-36 34th St. Long Island City, N.Y. 11103	2 Apt. Units/ Office Space in L.I.C., N.Y.	63,000	1973	25,000	100,000	75,000
4.	Mr. Ante Kalinic Mrs. Christine Kalinic	625 Waverly Place Union Dale, L.I., N.Y. 11553	Residence	30,000	1971	13,000	37,500	24,500
5.	Mr. Bruno Govorcin Mrs. Zdenka Govorcin	120 Truxton Rd. Dix Hills, N.Y. 11746	Residence	32,000	1969	20,000	58,000	38,000
6.	Mr. Ante Nosic	28-40 34th St. Long Island City, N.Y. 11103	Land in Cape Coral, Fla.	2,800	1959	-	7,200	7,200
7.	Dr. Radoslav Maric Mrs. Nada Maric	50 Foxhill Rd. Woodbridge, Conn.	Residence	125,000	1976	50,000	135,000	85,000
8.	Mr. Pasko Loncar Mrs. Manda Loncar	94 Daniel Ave. Rutherford, N.J. 07070	Residence	38,000	1974	17,000	42,500	25,500
							Subtotal:	$ 353,200

SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
9.	Mr. Ante Kusturic Mrs. Nedjeljka Kusturic	12240 135 Ave. Ozone Park, N.Y. 11420	Residence	$ 65,000	1973	$ 37,500	$ 75,000	$ 37,500
10.	Mr. Miljenko Pinjusic Mrs. Dumica Pinjusic	432 9th St. Fairview, N.J. 07022	Residence	32,000	1968	12,000	55,000	43,000
11.	Mr. Petar Bozanic Mrs. Marija Bozanic	61-26 Woodbine St. Ridgewood, N.Y. 11227	Land in Hazelton, Pa. (for 2 Houses)	9,500	1974	5,750	12,750	7,000
12.	Mr. Tozo Ivancic Mrs. Desa Ivancic	69 Merrick Ave. East Meadow, N.Y. 11554	Residence	35,000	1974	23,600	40,000	16,400
13.	Mr. Andjelko Lozina Mrs. Marrica Lozina	531 Ashford Ave. Ardsley, N.Y. 10502	Residence	39,000	1972	13,500	60,000	46,500
14.	Mr. Stipe Basic Mrs. Joan M. Basic	636 Martin Ave. Oradell, N.Y. 07649	Residence	55,000	1970	24,900	72,500	47,600
15.	Mr. Ivan Jukic Mrs. Dragica Jukic	154-11 12th Rd. Whitestone, N.Y. 11357	Residence	33,000	1974	12,000	57,500	45,500
16.	Mr. Joseph Knezevic Mrs. Helen Knezevic	43-42 Colden St. Flushing, N.Y. 11355	Residence	24,000	1966	13,500	45,000	31,500

Subtotal: $ 275,000

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SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
17.	Mr. Zvonimir Misevic Mrs. Marija Misevic	1524 Nepperhon Ave. Yonkers, N.Y. 10703	Residence	$ 53,500	1970	$ 33,000	$ 70,000	$ 37,000
18.	Mr. Miho Miketic Mrs. Barka Miketic	4834 59th St. Woodside, N.Y. 11377	Residence	95,000	1972	88,000	95,000	7,000
19.	Mr. Ambrose Baotic Mrs. Ana Baotic	33 E. Barmore Dr. Stamford, Conn. 06904	Apt. House with 3 Apts.	31,000	1969	27,000	80,000	53,000
20.	Mr. Ljubo Kolanovic Mrs. Mirela Kolanovic Mr. Sime Pavic	8 Wessel's Place Byram, Conn. 10573	Residence	65,000	1974	42,000	92,000	50,000
21.	Mr. Miro Gal Mrs. Violet Gal	67-88 Groton St. Forest Hills, N.Y. 11375	Residence	51,000	1970	32,000	67,500	35,500
22.	Mr. Vinko Kuzina Mrs. Nada Kuzina	1460 15th St. Fort Lee, N.J. 07024	Residence	45,000	1965	20,000	87,500	67,500
23.	Mr. Edo Martek Mrs. Gerda Martek	9 Harmony Ct. Syosset, N.Y. 11791	Residence	34,500	1970	20,000	60,000	40,000
24.	Mr. Andjelko Jakic Mrs. Karen Jakic	44 Myrtle Blvd. Larchmont, N.Y. 10538	Business (Manufacturing)	78,000	1974	-	150,000	150,000
							Subtotal:	$ 440,000

SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
25.	Mr. Tomo Glavan Mrs. Angela Glavan	41-05 30th Ave. L.I.C., N.Y. 11103	1) Residence & Business	$ 75,000	1971	$ 38,000	$ 175,000	$ 137,000
			2) Apt. Bldg.	145,000	1972	74,000	240,000	166,000
26.	Mr. Emil Livljanic	80 Ocean Ave. East Rockway, L.I.C., N.Y. 11518	1) Residence 2) Business	285,000	1976	180,000	550,000 (total)	370,000
27.	Mr. Mile Pesa Mrs. Marija Pesa	174 Cromwell Ave. Staten Island, N.Y. 10304	Residence	54,000	1973	35,000	70,000	35,000
28.	Mr. Andrija Saric Mrs. Zora Saric	54 E. Brinkerhoff Ave. Palisades Park, N.J. 07650	Residence	135,000	1973	67,000	150,000	83,000
29.	Mr. Bozidar Morovic Mrs. Maria Morovic	212-09 28th Ave. Bayside, N.Y. 11361	Residence	35,000	1968	9,000	70,000	61,000
30.	Mr. Steve Ivkosic Mrs. Annette Ivkosic	31 North Eckar St. Irving, N.Y. 14081	Apt. Bldg - 2 Apts.	18,000	1975	11,000	39,000	28,000
31.	Mr. Franjo Salopek Mrs. Veronica Salopek	31-49 41th St. L.I.C., N.Y. 11103	Residence and 2 Apts.	64,000	1969	35,000	100,000	65,000
							Subtotal:	$ 945,000

SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
32.	Mr. Jacob Grgic	2035 W. 111th St. Chicago, Ill. 60643	Apt. Bldg.- 43 Apts.	$ 350,000	1975	$ 280,000	$ 375,000	$ 95,000
33.	Mr. Daniel Bugarija Mrs. Sandra Bugarija	624 Ionia Ave. Staten Island, N.Y. 10312	Residence	47,500	1971	28,000	62,500	34,500
34.	Mr. Pavle Prigorec Mrs. Ana Prigorec	963 Seneca Ave. Ridgewood, N.Y. 11227	Residence	38,500	1968	12,000	65,000	53,000
35.	Mr. Marko Vidovic Mrs. Lydia Vidovic	21-16 23 Ave. Long Island City, N.Y. 11105	Residence	21,000	1968	6,000	50,000	44,000
36.	Mr. Ante Milos Mrs. Mara Milos	2046 Palmeto St. Ridgewood, N.Y. 11227	Residence	60,000	1972	40,000	70,000	30,000
37.	Mr. Steve Rimac Mrs. Hanna Rimac	164 Browerton Rd. Little Falls, N.J. 07424	Residence	46,500	1976	30,000	56,000	26,000
38.	Mr. Josip Cindric Mrs. Dragica Cindric	2601 Foxdale Ave. Oceanside, N.Y. 07424	Residence	40,000	1974	23,500	45,000	21,500
39.	Mr. Tony Spraic Mrs. Gordana Spraic	248-03 41st Ave. Little Neck, N.Y. 11363	Residence	50,000	1976	40,000	57,500	17,500
							Subtotal:	$ 321,500

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SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
40.	Mr. Steve Pavlak Mrs. Ana Pavlak	32-35 47th St. L.I.C., N.Y. 11103	Residence	$ 40,000	1968	$ 23,000	$ 60,000	$ 37,000
41.	Mr. Ante Ukalovic Mrs. Nevenka Ukalovic Mr. Andrija Jelic Mrs. Danica Jelic	52-51 73 Drive Maspeth, N.Y. 11378	Residence	47,000	1973	31,000	70,000	39,000
42.	Mr. Ivan Pavela	1575 Iranistan Ave. Bridgeport, Conn. 06602	Apt. Bldg. - 2 Apts.	42,000	1971	26,500	48,500	22,000
43.	Mr. Tunislav Basic Mrs. Nada Basic	2506 30 Drive L.I.C., N.Y. 11102	Land - 1/4 acre, Bethlehem, Pa.	5,500	1973	-	7,000	7,000
44.	Mr. Vlado Zimic Mrs. Kata Zimic Mr. Milan Zimic (brother)	133 Grant Ave. Brooklyn, N.Y. 11208	Residence	28,000	1966	4,000	45,000	41,000
45.	Mr. Ivo Orlic Mrs. Joan Ivka Orlic (sister) Mr. Ivan Orlic (father)	408 7th St. Carlstadt, N.J. 07072	Residence	71,000	1974	16,500	92,500	76,000
							Subtotal:	$ 222,000

SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
46.	Mr. Srecko Olic Mrs. Maria Olic	10 Acorn Rd. St. James, L.I.C. N.Y. 11780	Residence	$ 50,000	1973	$ 34,000	$ 62,500	$ 28,500
47.	Mr. Tom Olic Mrs. Danica Olic	126 Rocklyn Ave. Lynbrook, N.Y. 11563	Residence	45,000	1976	21,000	52,000	31,000
48.	Mr. Ante Purcic Mrs. Maria Purcic	1235 43 St. Brooklyn, N.Y. 11219	Residence	30,000	1968	6,000	45,000	39,000
49.	Mr. Ljubo Matesic Mrs. Camela Matesic	25-72 50 St. Woodside, N.Y. 11377	Residence	62,500	1971	20,000	80,000	60,000
50.	Mr. Joseph Setka Mrs. Angelica Setka	31-58 38 St. L.I.C., N.Y. 11103	Residence	90,000	1974	62,000	110,000	48,000
51.	Mr. Stipe Susic Mrs. Inger Susic Mr. Marko Susic Mrs. Anica Susic	105 N. Water St. Byram, Conn. 10573	Residence	50,000	1970	12,000	60,000	48,000
							Subtotal:	$ 254,500

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SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
52.	Mr. Andjelko Maslac Mrs. Maria Maslac	130 Channel Dr. East Shirley, L.I.,N.Y.	Residence	$ 45,000	1973	$ 28,000	$ 50,000	$ 22,000
53.	Mr. Mirko Luburic Mrs. Christina Luburic	31 Ridje Rd. Ardsley, N.Y. 10502	Residence	38,000	1971	14,000	65,000	51,000
54.	Mr. Ivo Sain Mrs. Diane Sain	28 Wessel's Place Byram, Conn. 10573	Residence	39,000	1971	26,000	65,000	39,000
55.	Mr. Marijan Blaslov Mrs. Ljubica Blaslov	536 60 St. Brooklyn, N.Y. 11270	Residence	41,500	1973	19,000	60,000	41,000
56.	Mr. Dragan Kauzljar Mrs. Ana Kauzljar	2005 Woodbine St. Ridgewood, N.Y. 11227	Residence	42,000	1966	-	60,000	60,000
57.	Mr. Bozo Radalj Mrs. Lovorka Radalj	49-66 Broadway New York, N.Y.	Residence	90,000	1976	50,000	95,000	45,000
58.	Mr. Ivo Teskara Mrs. Dicna Teskara	135-57 Leffert Blvd. Ozone Pk., L.I., N.Y. 11420	Residence	75,000	1973	52,000	95,000	43,000
							Subtotal:	$ 301,000

SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
59.	Mr. Milan Vojvodic Mrs. Matilda Vojvodic	7 W. 96th St. New York, N.Y. 10025	Apt. Bldg.- 6 Apts.	$	1972	$ 25,000	$ 125,000	$ 100,000
60.	Mr. Gaspar Skorpanic	32-23 43rd St. L.I.C., N.Y. 11103	Business- Delicatessen	21,000	1973	-	25,000	25,000
61.	Mr. Ivan Misetic	9320 N. Ewing St. Skokie, Ill. 60076	Apt. Bldg.- 9 Apts.	65,000	1972	43,000	135,000	92,000
62.	Mr. Ivan Radeljic Mrs. Lena Radeljic Mr. Nilua Elasao	2414 Beaumont Ave. Bronx, N.Y. 10458	Residence	28,000	1973	13,000	80,000	67,000
63.	Mr. Tom Samarga	150 Holland Ave. Staten Island, N.Y. 10303	Apt. Bldg.- 6 Apts.	Inherited	1973			100,000
64.	Mr. Mile Markic Mrs. Julia Markic	8210 Elmwood Ave. Skokie, Ill. 60076	Residence	39,000	1969	20,000	55,000	35,000
65.	Mr. Jozo Lucic Mrs. Katica Lucic	60-05 69 Ave. Ridgewood, N.Y. 11227	Residence	42,000	1971	14,000	65,000	51,000
							Subtotal:	$ 470,000

SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
66.	Mr. Jerko Grubisic Mrs. Mila Grubisic	4929 N. Wolcott Ave, Chicago, Ill.	Apt. Bldg.- 24 Apts.	$ 205,000	1975	$ 155,000	$ 300,000	$ 145,000
67.	Mr. Marko Loncar Mrs. Ana Loncar	9526 S. Muskeegan Ave. Chicago, Ill.	Business Residence	25,000	1970 1974	- 14,000	100,000 40,000	100,000 26,000
68.	Mr. Marko Loncar, Jr. Mrs. Lillian Loncar	3016 E. 97th St. Chicago, Ill.	Residence	30,000	1972	15,000	57,500	42,500
69.	Mr. Kris Loncar	9526 Muskeegan Ave. Chicago, Ill.	Business		1970	25,000	220,000	195,000
70.	Mr. Rajko Loncar Mrs. Jelica Loncar	29-22 E. 97 St. Chicago, Ill.	Residence	19,700	1972	2,000	50,000	48,000
71.	Mr. Mladen Loncar Mrs. Mira Loncar	28-59 E. 96 St. Chicago, Ill.	Residence	30,000	1976	23,000	35,000	12,000
72.	Mr. Anljelko Jurkovic Mrs. Maria Jurkovic	387 Muchinaw Ave. Calumet City, Ill.	Residence Business/Land		1973 1973	43,000 32,000	73,000 66,500	30,000 34,500
73.	Mr. Stipe Sego, President, Croation National Resistance Corp.	2927 S. Princeton Ave. Chicago, Ill.	Land (7 lots) in Chicago, Ill.	66,000	1968	-	150,000	150,000
74.	Petar Kozul	9522 8th Exchange St. Chicago, Ill.	Residence	17,000	1975	-	27,500	27,500
							Subtotal:	$ 810,500

SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
75.	Mr. Vidak Jurkovic Mrs. Zlata Jurkovic	319 154th Pl. Calumet City, Ill.60409	Residence	$ 31,000	1974	$ 24,400	$ 44,000	$ 19,600
76.	Mr. Nick Town Mrs. Stefanie Town	4200 Milwaukee Chicago, Ill. 60641	Apt. Bldg.- 31 Apts.	140,000	1972	65,000	175,000	110,000
77.	Mr. Ivan Pervan Mrs. Elida Pervan	502 Garfield Ave. Calumet City, Ill.	Apt. Bldg.- 4 Apts.	45,000	1972	18,000	70,000	52,000
78.	Mr. Nedl ko Sego Mrs. Blagica Sego	16072 Marion Dr. South Holland, Ill.	Residence	29,000	1973	21,200	45,000	23,800
79.	Mr. Bosiljko Dragicevic	635 Wentworth Calumet City, Ill.	Apt. Bldg.- 3 Apts.	40,000	1973	28,500	50,000	21,500
80.	Mr. Nedljko Sego Mrs. Blagica Sego Mr. Bosiljko Dragicevic	See Item 78. See Item 79.	Business	17,500	1975	8,500	30,000	21,500
81.	Mr. Ivan Jurkovic Mrs. Vlosa Jurkovic	9521 S. Exchange Chicago, Ill.	Apt. Bldg.	45,000	1972	12,000	150,000	138,000
82.	Mr. Mate Kuraja Mrs. Jadranka Kuraja	2833 Chicago Road S. Chicago Heights,Ill.	Residence House-2 Apts.	29,400 16,800	1973 1976	17,400 16,800	55,000 35,000	37,600 18,200
							Subtotal:	$ 442,200

SCHEDULE OF REAL PROPERTY OFFERED AS SECURITY FOR BAIL (CONTINUED)

	SURETY	RESIDENCE ADDRESS	DESCRIPTION OF SECURITY	ACQUISITION PRICE	DATE OF ACQUISITION	OUTSTANDING MORTGAGE	FAIR MARKET VALUE	NET WORTH OF SECURITY
83.	Mr. Ilko Nilicevic	5542 W. 35th St. Cicero, Ill.	Apt. Bldg.- 2 apts.	$ 22,000	1969	-	$ 50,000	$ 50,000
84.	Mr. Tom Zovko Mrs. Draga Zovko	9523 S. Muskegan Chicago, Ill.	Residence	27,000	1974	$ 7,500	36,000	28,500
85.	Mr. Frank Horvat Mrs. Danica Horvat	6200 University St. Chicago, Ill.	Apt. Bldg.- 25 apts.	85,000	1974	35,000	130,000	95,000
86.	Mr. Jure Kuraja Mrs. Zofia Kuraja	95 W. 28th St. S. Chicago Heights,Ill	Residence	9,000	1971	3,800	30,000	26,200

Subtotal: $ 199,700

Grand Total: $5,034,600

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RELEASE PENDING APPEAL AND TRIAL

Defendant Zvonko Busic, by undersigned counsel, has moved this Court, pursuant to Rule 46 of the Federal Rules of Criminal Procedure and 18 U.S.C. §§ 3146, 3148, for an order releasing him from confinement pending appeal and trial. This Memorandum of Points and Authorities is submitted in support of the Motion for Release Pending Appeal and Trial. Counsel are also offering the supporting Affidavit of Jane E. Hall and the accompanying "Schedule of Real Property Offered as Security for Bail" (hereinafter "Schedule"). Based on the Schedule, it can be seen that the defendants have raised in excess of Five Million ($5,000,000) Dollars in the form of property as security for bail. We respectfully submit that, in light of this development and based on the information submitted to this Court in connection with defendant Zvonko Busic's earlier Motion for Reduction of Bail, the defendant should be released pending the government's appeal of this Court's dismissal of Counts One and Two of the Indictment and pending any later trial on the following conditions:

1. Placement in third-party custody of a designated person;

2. Residence at a designated place of abode;

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3. Restrictions on travel and limitations on the amount of time away from his residence;

4. Obtaining employment in New York City;

5. Daily reporting requirements; and

6. The execution of sufficient appearance bonds (Cr. Form No. 17) such that the total net worth of security in the form of property equals One Million ($1,000,000) Dollars.

In support of his earlier Motion for Reduction of Bail, defendant Zvonko Busic submitted nine affidavits setting forth extensive facts confirming his community ties in the New York area, his reputation for honesty, reliability and trustworthiness, his history of nonviolent behavior, and his unblemished record of court appearances relating to two minor brushes with the law. This Court denied defendant's Motion for Reduction of Bail and continued bail in the amount of One Million ($1,000,000) Dollars.

Defendant now asks the Court to order his release pending appeal and later trial on the same first five conditions outlined in his Motion for Reduction of Bail and set forth above in this Memorandum.*/ In satisfaction of the One Million ($1,000,000) Dollar bail requirement, defendant Zvonko Busic respectfully requests that this Court accept security in the form of property having a net worth of One Million ($1,000,000) Dollars.

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*/ In addition to the authorities cited in defendant's earlier Motion for Reduction of Bail, we direct the Court's attention to the opinion of Mr. Justice Powell sitting as Circuit Justice in Chambers v. Mississippi, 405 U.S. 1205 (1972). In that case, Mr. Justice Powell ordered the petitioner's release pending consideration of his petition for writ of certiorari. In order to assure that the petitioner would not flee or pose a danger to any other person, Mr. Justice Powell imposed several conditions on his release identical to those suggested by counsel in this case, including living at a designated place of residence, employment, and periodic reporting to a public official.

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Defendant suggests that the Court adopt the following procedures:

1. All individuals wishing to serve as surety and to post their property as security for bail must execute the standard Appearance Bond Form (Cr. Form No. 17), a copy of which is attached hereto as Attachment A. It is counsel's understanding that this form is regularly used in this Court and elsewhere in the federal courts as an instrument legally obligating the surety to assure the defendant's presence at trial and acknowledging that the property posted as security is subject to forfeiture in the event that the defendant fails to appear at trial.

2. To minimize inconvenience to the sureties and the Court and to promote the prompt execution of the Appearance Bond, a surety may execute the Appearance Bond before any Notary Public authorized by law to witness signatures.

3. A Magistrate designated by this Court will be responsible for receiving and reviewing the Appearance Bonds and confirming that all conditions prescribed in this Court's order for defendant's release have been satisfied.

Defendant Zvonko Busic believes that these conditions and procedures are more than sufficient to assure the defendant's presence at trial. As the accompanying affidavit of Jane E. Hall shows, the persons listed in the Schedule as sureties have a complete understanding of the nature of their responsibilities and the consequences of their decision to post their property as security. Each surety

1. Understands that the property listed in the Schedule will be legally committed as collateral to assure the presence of one or more defendants at trial;

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2. Understands that the failure of one or more of the defendants to appear as required at any court proceeding might cause his property to be forfeited and that he might lose all rights and interest in the property and be forced to abandon the premises;

3. States that no one has promised him, nor does he have any understanding, that in the event his property is forfeited on account of a defendant's failure to appear, his loss will be repaid by any individual, group of individuals, or organizations; and

4. Understands that if the property is accepted as collateral he will be responsible for assuring the presence of the defendant at trial.

We submit that this outpouring of community support on behalf of defendant Zvonko Busic and his co-defendants is a striking statement of belief that these defendants will honor the trust placed in them and will appear as required. Indeed, these sureties are willing to commit not only themselves but the savings of a lifetime to aid these defendants. It can be fairly said that the Croatian community has expressed its willingness to stand as surety for these defendants.

We therefore respectfully request that the Motion for Release Pending Appeal and Trial be granted and that the defendant Zvonko Busic be released from confinement pending appeal and trial on the conditions outlined by counsel.

Dated: Washington, D. C.
December 13, 1976

Respectfully submitted,

Michael E. Tigar
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Of counsel:

Edward Bennett Williams
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—
AREA CODE 202
331-5000

Appearance Bond (Rev. 1972) Attachment A

Cr. Form No. 11

United States District Court

FOR THE

UNITED STATES OF AMERICA

v.

APPEARANCE BOND FOR

No.

Non-surety: — I, the undersigned defendant, acknowledge that I and my . . .
Surety — We, the undersigned, jointly and severally acknowledge that we and our . . .

personal representatives, jointly and severally, are bound to pay to the United States of America the sum of $_____ */and there has been deposited in the Registry of the Court the sum of $_____ in cash */or_____ (describe other security) */ a sum not exceeding 10% of the amount of the bond.*/

The conditions of this bond are that the defendant

is to appear before , United States Magistrate for the

District of , at* , and in the

United States District Court for the District of at

, and at such other places as the defendant may be required to appear, in accordance with any and all orders and directions relating to the defendant's appearance in the above entitled matter as may be given or issued by the magistrate or by the United States District Court for the District of or any other United States District Court to which the defendant may be removed or the cause transferred; that the defendant is not to depart the District of , or the jurisdiction of any other United States District Court to which the defendant may be removed or the cause transferred after he has appeared in such other district pursuant to the terms of this bond, except in accordance with such orders or warrants as may be issued by the magistrate or the United States District Court for the District of or the United States District Court for such other district; that the defendant is to abide any judgment entered in such matter by surrendering himself to serve any sentence imposed and obeying any order or direction in connection with such judgment as the court imposing it may prescribe.

If the defendant appears as ordered and otherwise obeys and performs the foregoing conditions of this bond, then this bond is to be void, but if the defendant fails to obey or perform any of these conditions, payment of the amount of this bond shall be due forthwith. Forfeiture of this bond for any breach of its conditions may be declared by any United States District Court having cognizance of the above entitled matter at the time of such breach and if the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in such United States District Court against each debtor jointly and severally for the amount above stated, together with interest and costs, and execution may be issued and payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

It is agreed and understood that this is a continuing bond which shall continue in full force and effect until such time as the undersigned are duly exonerated.

This bond is signed on this day of 19

at

Name of Defendant. Address.

Name of Surety. Address.

Name of Surety. Address.

Signed and acknowledged before me this day of 19

Approved: .....

* When the defendant is released after arrest on warrant issued by a United States District Court in another district, or when the defendant is released after arrest on warrant issued upon an information or complaint in another district or from a foreign country, the bond must require the defendant to appear before the United States District Court for the district in which the prosecution is pending, at such time and place as may be specified.

*/ Strike out whichever is inapplicable.

JUSTIFICATION OF SURETIES

I, the undersigned surety, on oath say that I reside at ; and that my net worth is the sum of Dollars ($).

I further say that

Surety.

Sworn to and subscribed before me this day of 19 at

I, the undersigned surety, on oath say that I reside at ; and that my net worth is the sum of Dollars ($).

I further say that

Surety.

Sworn to and subscribed before me this day of 19 at

No.

United States District Court

for the

District of

THE UNITED STATES OF AMERICA

vs.

APPEARANCE BOND

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	76 Cr. 602 (JRB) AFFIDAVIT OF SERVICE

PIERCE O'DONNELL, being duly sworn, deposes and says:

1. I am over the age of eighteen years, and not a party to this action.

2. On December 13, 1976, I served the following papers: Notice of Motion, Memorandum of Points and Authorities in Support of Motion for Release Pending Appeal and Trial, and Affidavit of Jane E. Hall.

3. Service was effected by depositing a copy of each paper, first-class postage fully prepaid, in the United States mails at Washington, D. C., addressed as follows:

Thomas R. Pattison, Esq.
Assistant United States Attorney
Chief, General Crimes
Eastern District of New York
Federal Building
Brooklyn, New York 11201

David Rudolf, Esq.
26 Court Street, Suite 701
Brooklyn, New York 11242

Richard Occhetti, Esq.
100 Centre Street
New York, New York 10013

Martin Elefant, Esq.
16 Court Street
Brooklyn, New York 11242

LAW OFFICES
WILLIAMS CONNOLLY
& CALIFANO
1000 HILL BUILDING
WASHINGTON, D.C. 20006
AREA CODE 202
331-5000

Paul Bergman, Esq.
25 Broadway
New York, New York 10004

Ms. Nancy Rosner
401 Broadway
New York, New York 10013

Irwin Rochman, Esq.
230 Park Avenue
New York, New York 10017

Pierce O'Donnell
PIERCE O'DONNELL

Subscribed and sworn to before me this 13th day of December, 1976.

Notary Public

My Commission Expires September 30, 1977

LAW OFFICES
WILLIAMS, CONNOLLY
& CALIFANO
1000 HILL BUILDING
WASHINGTON, D.C. 20006
AREA CODE 202
331-5000

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -X

UNITED STATES OF AMERICA

-v-

ZVONKO BUSIC, ET AL.,

Defendants

- -X

NOTICE OF MOTION

76 Cr. 602

SIRS:

PLEASE TAKE NOTICE that upon the annexed affirmation of J. JEFFREY WEISENFELD, of counsel to NANCY ROSNER, attorney of record for defendant Mark Vlasic, and upon all papers and proceedings herein, the undersigned will move this court before the Hon. John R. Bartels in Courtroom 4 of the U.S. Courthouse, Brooklyn, New York, on Monday, December 20, 1976, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 46 of the Federal Rules of Criminal Procedure and 18 U.S.C. §§3146,3148, releasing the defendant Mark Vlasic from custody pending appeal and trial.

Dated: New York, N.Y.

December 14, 1976

Yours, etc.

TO: DAVID G. TRAGER
United States Attorney
Eastern District of N.Y.

NANCY ROSNER, ESQ.
J. JEFFREY WEISENFELD, of counsel
401 Broadway
New York, New York 10013
212 925-8844

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -X

UNITED STATES OF AMERICA

-v-

ZVONKO BUSIC, ET AL.,

AFFIDAVIT

76 Cr. 602

Defendants

- -X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

J. JEFFREY WEISENFELD, being duly sworn, deposes and says:

1. I am of counsel to Nancy Rosner, the attorney of record for defendant Mark Vlasic, and make this affidavit in support of defendant Mark Vlasic's motion for release pending appeal and trial.

2. Defendant respectfully joins in the motion and arguments set forth in defendant Zvonko Busic's motion for release pending appeal and trial and requests that the Court accept security in the form of property having a net worth of one million ($1,000,000) dollars, as more fully set forth in the affidavit and memorandum of points and authorities annexed to defendant Zvonko Busic's motion. In the motion papers filed on behalf of co-defendant Busic, it is made clear that the $5,000,000. security is collectively offered on behalf of each defendant in this case (See memorandum

of points and authorities, p. 3-4).

WHEREFORE, defendant Mark Vlasic respectfully requests that the motion for release pending appeal and trial be granted and that defendant Mark Vlasic be released from confinement pending appeal and trial upon the conditions set forth by counsel for co-defendant Busic.

Sworn to before me this
14th day of December, 1976

J. Jeffrey Weisenfeld
JEFFREY WEISENFELD

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

-against-

ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASICK,

Defendants

----------x

76 Cr. 602

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affirmation of Martin Elefant, counsel along with Paul Bergman, and upon all papers and proceedings heretofore had herein, the undersigned will move this court before the Honorable John R. Bartels in Courtroom 4 of the United States Courthouse, Brooklyn, New York, on Monday, December 20, 1976, at 9:30 a. m., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 46 of the Federal Rules of the Criminal Procedure and 18 U.S.C. SS3146, 3148, releasing the defendant Petar Matanic from custody pending appeal and trial.

Dated: Brooklyn, New York
December 16, 1976

Respectfully submitted,

Martin Elefant
16 Court Street
Brooklyn, New York 11241
Tel.: (212) 624-2240

Paul B. Bergman
Ford Marrin Esposito Witmeyer
& Bergman
25 Broadway
New York, New York 10004
Tel.:(212) 269-4900

TO:

Honorable David G. Trager
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Michael Tigar, Esq.
Williams, Connolly & Califano
1000 Hill Building
Washington, D.C. 20006

Irwin Rochman, Esq.
230 Park Avenue
New York, New York 10017

Nancy Rosner, Esq.
401 Broadway
New York, New York 10013

David Rudolf, Esq.
Legal Aid Society
26 Court Street
Brooklyn, New York 11242

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

-against-

76 Cr. 602

AFFIRMATION

ZVONKO BUSIC, JULIENNE BUSIC,
PETAR MATANIC, FRANE PESUT, and
MARK VLASICK,

Defendants.

----------x

STATE OF NEW YORK)
SS.:
COUNTY OF KINGS)

MARTIN ELEFANT, attorney-at-law, under penalties of perjury, hereby affirms:

1. I am counsel along with Paul Bergman for defendant Petar Matanic, and make this affirmation in support of defendant Petar Matanic's motion for release pending appeal and trial.

2. Defendant respectfully joins in the motion and arguments set forth in defendant Zvonko Busic's motion for release pending appeal and trial and requests that the Court accept security in the form of property having a net worth of one million ($1,000,000.00) dollars, as more fully set forth in the Affidavit and Memorandum of Points and Authorities annexed to defendant Zvonko Busic's motion. In the motion papers filed on behalf of

co-defendant Busic, it is made clear that the $5,000,000.00, security is collectively offered on behalf of each defendant in this case (See Memorandum of Points and Authorities, p. 3-4).

WHEREFORE, defendant Petar Matanic respectfully requests that the motion for release pending appeal and trial be granted and that defendant Petar Matanic be released from confinement pending appeal and trial upon the conditions set forth by counsel for co-defendant Busic.

MARTIN ELEFANT

Dated: Brooklyn, New York
December 16, 1976

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 76-CR-602

ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, MARC VLASIC, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

December 20, 1976
9:30 o'clock A.M.

B e f o r e :

HONORABLE JOHN R. BARTELS, U.S.D.J.

HENRI LEGENDRE
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: THOMAS PATTISON, ESQ.
Assistant U.S. Attorney

MICHAEL E. TIGAR, ESQ.
Attorney for Z. Busic

DAVID RUDOLPH, ESQ.
MICHAEL ASEN, ESQ.
Attorneys for J. Busic

MARTIN ELEFANT, ESQ.
PAUL BERGMAN, ESQ.
Attorneys for Matanic

IRWIN ROCHMAN, ESQ.
Attorney for Defendant Pesut

NANCY ROSNER, ESQ.
Attorney for Defendant Vlasic

THE CLERK: Criminal motion, U.S.A. v. Zvonko Busic, Julienne Busic, Petar Matanic, Franjo Pesut and Marc Vlasic.

THE COURT: All right, let's proceed.

MR. TIGAR: Mr. Rochman is obtaining services of an interpreter for Mr. Pesut.

THE COURT: Do we have the necessary interpreter here?

MR. ELEFANT: We have.

THE COURT: You'd better swear him in.

B O R I S M A U R I C E , was duly sworn as Interpreter.

MR. TIGAR: When last we were here the Court reaffirmed the earlier setting of $1 million in bail of each of the five defendants, a total of $5 million.

We are here this morning because of the result of an effort, which I think is precedented, we have satisfied the Court's conditions.

THE COURT: Well, that is a question that's open to debate. That is, if we take all your figures as correct. I'll listen to you. Go ahead.

MR. TIGAR: That question was the one to which I was about to come. Each of the people whose names and addresses and properties are listed here has been interviewed by a para-legal fromour office, using a

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three-page interview form.

THE COURT: I read that.

MR. TIGAR: Your Honor realizes when each of these people comes before a Notary or a U.S. Magistrate in the judicial district nearest their homes and lists on the surety form a copy of which is attached to our papers the net worth of the security which is being pledged --

THE COURT: Let me say this to you, Mr. Tigar. Let's get right down to basics real fast. This is a very serious offense. There is now pending before the Court of Appeals a question of whether this case is before me at all.

Now, it would be a very bizarre thing for me to pass on bail before that decision is made. Let's be practical and realistic. I have an obligation. I am not going to pass on any bail until that decision comes down. The case may not be before me at all; in which event, I would be substituting my judgment for the judgment of the court in Buffalo. We have to face facts, that's the status of the matter.

I have suggested, recommended that you accelerate this appeal.

MR. TIGAR: We moved to do so.

THE COURT: I know you did, but you didn't send

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up my opinion. Just the other day the Clerk of the Court didn't have copies of my opinion.

Now, how can you accelerate an appeal under those circumstances? We immediately sent a man over there or hand-delivered those opinions. Now, I think that's the only practical, sensible way. I would say that you have all this data all set and when the case is decided you can renew the motion and then the proper court will pass on it.

MR. TIGAR: May I be heard, your Honor?

THE COURT: Yes indeed.

MR. TIGAR: Thank you.

With respect to the duty to get your Honor's opinion which I agree should be in the Second Circuit --

THE COURT: Well, you are the appellant, aren't you?

MR. PATTISON: Yes.

THE COURT: Stand up here, Mr. Pattison. Why didn't you send the opinion over?

MR. PATTISON: I believe that would be part of our brief.

THE COURT: Why is it the Clerk of the Court asked for it and you are to get your brief in right away. This is an important matter, you ought to accelerate the appeal.

[6]

MR. PATTISON: We moved for that, your Honor, and it was granted.

THE COURT: Well, it isn't accelerated enough, I don't think. I've seen the proper applications made before the Court of Appeals and they are very sympathetic of matters of this kind. It's somewhat of a crisis so you should immediately ask for a decision. I'm not pre-judging what may happen in the Court of Appeals, I don't think this is that kind of a difficult case.

MR. PATTISON: I agree.

THE COURT: Do they realize that? They probably didn't until they got the opinion.

MR. PATTISON: Well, your Honor --

THE COURT: Can you press it? Can you call them up? Can you walk over there, can you find out? These people want some action one way or the other. I am in limbo, very frankly.

MR. TIGAR: May I be heard on that point, it's very important.

THE COURT: It's very important to me, too.

MR. TIGAR: There is a case in the Supreme Court called Carlson v. Landon which the Government cited in its moving papers on the question of bail. I think it's important to note two things: first, the

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conspiracy count is still pending here; second, the bail reform act --

THE COURT: Wait a minute. The conspiracy, to try to consider this case as one involving only a conspiracy in this district at the present time is being unrealistic. You have to remember also that you have no bail in the state court. Why don't you see whether you could get bail in the state court first? You have no bail in the state court.

MR. TIGAR: We have a bail motion under submission. If your Honor would hear me out.

THE COURT: I'll hear you out for the next couple of hours, if you wish.

MR. TIGAR: By statute, this Court has the power to fix bail pending the Government's appeal. Of all of the issues here that is the one upon which the Government and the defense are, I think -- unless Mr. Pattison changed his position since last we were here -- are in agreement.

THE COURT: I don't have to wait for an opinion to fix bail.

MR. PATTISON: Bail was fixed.

THE COURT: I didn't fix it. Somebody else did it.

MR. TIGAR: You reaffirmed it.

[8]

THE COURT: That's right.

MR. TIGAR: You fixed it in light of the presence of the case of the two charges which are now before the Court of Appeals, I think that's important.

Your Honor took account of the fact that those charges were pending ever since Section 33 of the Judicial Act of 1790, which is really carrisd into Section 3148 of Title 18, the Bail Reform Act. It has been the province of any judge of the United States or any Magistrate of the United States, any Article 3 officer to set bail, and to set it even in this procedural situation.

THE COURT: There is no debate that I have the power.

MR. TIGAR: If your Honor has the power --

THE COURT: I don't debate that. I don't argue that. There is no question about that. It's a question of whether or not under the circumstances I'll do it. I don't think at any time the Court is deprived to fix bail, do you?

MR. TIGAR: No. If we are in agreement thus far, I think there is prudential reasons.

THE COURT: There is what?

MR. TIGAR: Prudential reasons.

Your Honor raised the question of the fact that

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we don't have bail in the state court. The fact of the matter is, your Honor, pending in the state court at this time is a bail motion which has been argued and submitted. It is our intention to move the two bail applications along together as it were, and if your Honor were moved to accept, which I think under the law your Honor ought to do, the submission that we made --

THE COURT: I thought you said I was mandated.

MR. TIGAR: The decision as to whether or not your Honor is mandated to do it would await an adverse decision which we hope won't happen and will be decided some place else. I wouldn't insult you by saying you are required to do it.

THE COURT: Have you done anything to find out why this appeal can't be decided? You have to be very careful and very discreet. Have you made any effort to inquire whether the case is on the Court of Appeals calendar; whether it could be put on a little earlier. You are not going to wait. You are talking about January; is that what you are talking about?

MR. PATTISON: No, no. We filed our brief Wednesday, this week; the case is on to be argued, I believe the week of the 10th of next month.

MR. TIGAR: We moved to expedite it. They said no. Here we are, your Court has the power to grant this

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relief. The reason we are moving here now is that your Honor ruled on the question of bail, you set a figure that you thought was fair.

THE COURT: I am not too sure that I wouldn't follow the state court until the matter had been finally settled. This is an offense which has to be adjudged exceedingly carefully in the sense that you don't look at money particularly; you look at propensities and you do after you hear defendants are accused of doing rather strange things involving kidnapping of 92 passengers and the death of one person, and the Court must realize the risk to the public involved releasing a person, regardless of whether they will show up at the time of the trial; that's not the only issue. You assume that's the only issue. It goes a little farther than that.

MR. TIGAR: Your Honor recognizes, I think, that that question of risk was canvassed in the prior opinion of this Court. What we are doing today is meeting the conditions which were imposed.

THE COURT: I am not sure I understand what you mean by canvass the risk.

What you want is a fast trial, here is the point; that's what you are entitled to instead of

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wasting all this time on bail applications. I would have given you it but you want a trial in Buffalo.

Now, you have been responsible for delaying the trial. Now, you say he's responsible for putting it in the wrong venue. Suppose, in fact, the Court of Appeals said he did not bring it in the wrong place. We are just being very technical. This Court can give you just as fair a trial as the Buffalo court.

Now, how it wound up there is a matter of tactics. When you resort to that luxury you lost your opportunity to a fast trial that you would have received on December 6th.

MR. TIGAR: If your Honor please, I do not regard, and I do not think that the Court ought to regard, with all due respect, the question of speedy trial and the question of bail is in any way related to one another.

THE COURT: Definitely related; nothing could be more directly related. And you look at the speedy trial rule which states that if anyone is incarcerated he has to have a speedy trial in three months; where if he's not incarcerated and bail has been allowed, you don't have to have a speedy trial until six months, so nothing could be more directly related than speedy trial and bail.

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MR. TIGAR: Yes, your Honor. I was speaking in this sense, that is, if the authors of the Bill of Rights regarded the question of speedy trial and bail as interchangeable then they would not have gone to the trouble to draft a Sixth Amendment provision for speedy trial and Eighth Amendment --

THE COURT: What the author of the Bill of Rights -- that's for the Supreme Court. I can't tell you that, but I know what my obligation is and I know what the facts in here are. You haven't said anything, Mr. Pattison. Shall we give them bail?

MR. PATTISON: I was waiting to get to the merits.

THE COURT: What are the merits?

MR. PATTISON: I believe the point is that bail has in fact been actually fixed.

I would just like to point out what we feel are some relevant factors, relevant to this. No. 1, the offer of proof for the offer of value for the various homes and apartment houses, delicatessens, businesses listed here are predicated solely on what appears to be owners' estimate of what they are worth, No. 1.

THE COURT: Mr. Tigar says no. Why isn't that so?

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MR. TIGAR: For three reasons; some of the instances as recounted in affidavits are based on appraisals.

THE COURT: Did you specify?

MR. TIGAR: We didn't specify. We'll do it if that's going to hang it up. There is an important reason, I think the record must reflect this, that the people's whose names are here, if they executed surety bonds for the defendants and falsely stated --

THE COURT: It wouldn't be falsely. The question of what a value of a piece of property is is a matter of opinion, you know that as well as I. There wouldn't be any intent to falsify. I may have an estimate that this property is worth $2 billion, and I may have that estimate in good faith; he or you may think it's only worth $300 million, so that's a matter of opinion, that's not a question of falsity. You know that as well as I do. It's hard to figure out exactly what it is worth; opinions as to real estate values vary, 100 to 300 per cent. Of course, it wouldn't be subject to any claim of rendering a false statement, that's a matter of opinion, you know that, I know that. It's not mathematics.

MR. TIGAR: It is a matter of opinion and it's for precisely that reason that we think any appraisal

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procedure would be undue encumbrance and a waste of time.

THE COURT: First, we'll have to decide who is going to grant the bail and then you go into the details.

MR. PATTISON: May I also point out one or two other points?

No. 2, second point we have is that nowhere in the moving papers is it shown that any of the approximately 170 persons named, who would have to sign these bonds, and who would offer themselves as sureties for the appearance of these five defendants have ever laid eyes on them, know them.

THE COURT: That's not necessary.

MR. PATTISON: Over and above the offer of money, a surety obliges himself or should oblige himself to take an active interest in the appearance of the person at that trial. We would not accept solely an offer of cash, and I think that the case law is clear that bail is not the offer of cash on the part of a person to ensure another person's appearance at trial; it carries with it a dual role: No. 1, to stand the chance of having to lose the cash but the more important factor, they must oblige themselves and they must show to the Court they can aid in bringing the person before the Court. It's more than a mere monetary

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which a surety plays. I doubt whether any of these people or the bulk of them would know anyone of these five persons if they even fell over them.

MR. TIGAR: I don't think that's relevant. In fact, many of the people here do know the defendants, but I think there is a definitive, precise and dispositive answer to Mr. Pattison's concern. Of course, surety is interested and must be interested in producing the defendant, that's not to say that a corporate surety, for example, of the kind that this Court sees every day must be personally familiar with every defendant bailed out of this court. That would be a ridiculous state of affairs.

THE COURT: Well, he must make efforts to produce the defendant if the defendant forfeits bail. He doesn't have to know him.

MR. PATTISON: And these corporate sureties have a proven track record of having done that, unlike the names mentioned here.

THE COURT: We are off the track a little bit.

MR. TIGAR: May I respond to Mr. Pattison? I don't want the record incomplete.

These people represent, these 86 groups of people, a substantial interest, concern, section of the Croatian community, which is willing, your Honor,

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to put up -- you look at that list of 86 -- their homes, their businesses. There is a home in San Francisco; a number in Chicago and a number around here. Everything they possess, because they have confidence that these defendants, these five people identified with the Croatian community will show up; and these defendants, as we said in our original bail application, your Honor, they, too, possess a sense of honor that they would not betray the community of which they are a part.

THE COURT: You are emphasizing only one facet. The question is whether there is a risk involved of not showing up, that doesn't bother me too much, although that is a very important factor, but just being free out in the open, would they not again in an attempt to advertise or to seek publicity for Croatian independence, resort to some other episode or event which could be equally, I think, dangerous to the community. I'm worried about the danger to the community, not only thinking of their failure to show up, that's one thing, but danger to the community.

Now, we have a track record here of hijacking a plane in relation to which a policeman has been killed. As I said before, 140 passengers were kidnapped. Now, you just don't look at that as an ordinary case; that's a very serious case.

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Now, let's face it while I realize this. I think evidence of confidence and faith of the Croatian community that pledging all of their homes is most unusual, and I think it shows terrific confidence, at least if not in these people, in the movement for Croatian independence. You have to keep that in mind, too. I don't think I've seen so many homes pledged before and that certainly is a self-sacrificing gesture to say the least. Not many people would do that, but that shows a close-knit Croatian unity, and it shows also their strong faith and desire for Croatian independence, and everyone could perhaps join in that movement and that feeling, but that's a little bit besides the issue and I don't want to go beside the issue. I may be sympathetic, but I am not sympathetic about letting anyone out to the community who has already hijacked a plane, in the course of which one person has been killed. That's my problem, but that's one problem.

More importantly is the one I've already told you; one, this is in limbo; two, you still have no bail in the state court, and any bail that was rendered here would be meaningless unless the state court agreed to the same thing.

MR. TIGAR: That's true, your Honor, except

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this charge in this court carries the higher sentence, given the fact that your Honor has stayed the order of dismissal of counts 1 and 2.

THE COURT: I don't think that's true.

MR. TIGAR: The state charge is a second degree murder charge. It's not a capital charge.

THE COURT: What's the penalty?

MR. TIGAR: Twenty-five to life.

THE COURT: They haven't said that they were going to ask for the death penalty.

MR. TIGAR: Assuming the death penalty was in the case --

THE COURT: But they still have the options.

MR. TIGAR: Hence, it's a more dangerous case here. Your Honor's concern about danger, I think that's important. We did talk about it before. We have these five conditions that are listed here. We are not asking you to release the defendants willy-nilly, in the air.

THE COURT: I saw the five conditions. That is not sufficient under the circumstances.

MR. TIGAR: Those conditions, your Honor, have sufficed in a number of other cases.

THE COURT: But not in cases of this kind.

MR. TIGAR: Mr. Justice Powell --

THE COURT: You put that in your brief.

MR. TIGAR: And Chambers v. Mississippi.

THE COURT: I will say this: I have never seen such a thorough application for bail and citations of so many cases and such a terrific job done. I don't know any lawyer who could have done as well, if that's any consolation, but I have my obligation as well as you do. As I told you before, and I think you must know that I would be in a rather, I think, ambiguous position to act before the Court of Appeals decided.

MR. TIGAR: Your Honor has his duty and your Honor knows his duty; we have ours and we know. What we ask from your Honor today is an order releasing the defendants, granting our motion; if that please not your Honor we ask your Honor to give us an order denying our motion.

THE COURT: Prepare it. I'll sign it today.

MR. TIGAR: Thank you.

THE COURT: Anything else?

MR. BERGMAN: Yes, your Honor.

THE COURT: You don't have to; he presented the case beautifully. What is your problem?

MR. BERGMAN: Your Honor, the case from the date of arrest is now more than ninety days old; the defendants have been in custody for more than ninety

days.

THE COURT: Yes. You had a trial set down for December 6th and you asked for a motion to change venue, and I rendered an opinion. We are going to go over the whole thing?

MR. BERGMAN: I'll be very brief.

THE COURT: What was the expiration of the 90 days?

MR. PATTISON: December 13.

THE COURT: 13th of December, which was last Monday.

MR. BERGMAN: Yes, sir. During all that period of time, although it's customary for the United States to file notices of readiness, there had been no notice of readiness filed by the United States in this case. I point that out because the notice of readiness is a document which is expected and required.

THE COURT: Well, you were ready, the case was put down for December 6th. Now, what is your argument? Order to dismiss for lack of prosecution; is that your motion?

MR. BERGMAN: Under the --

THE COURT: Denied.

MR. BERGMAN: Thank you, your Honor.

MS. ROSNER: I begin from a slightly different

opinion. I'm not sure I understand. I'm sure how the issue is formed, a bail figure has been fixed in this case which took into account the factors which your Honor has mentioned this morning.

THE COURT: I don't know what it took in. I did not fix it. I just wouldn't change it.

MS. ROSNER: I'm sure your Honor isn't questioning the competence of the judicial authority.

THE COURT: Miss Rosner, what I am saying to you, a fixed bail of $1 million per defendant was made by, I think, Magistrate Chrein, and an application was made to reduce. If you want to argue it, I may if I want to weigh everything carefully adopt the same situation as the State Supreme Court, no bail.

MS. ROSNER: No one is suggesting that's appropriate.

THE COURT: Well, I'm thinking about it.

MS. ROSNER: What I am suggesting the figure which has been set reflects the factors which your Honor has taken into consideration.

THE COURT: I don't know what it reflects at all.

MS. ROSNER: Presumably, Judge, if it was made in compliance with the statute --

THE COURT: It was made by Magistrate Chrein,

and I just refuse to modify it, that's the story.

MS. ROSNER: What I am suggesting is that the Magistrate took into account factors such as danger to the community in assessing that figure and in fixing it, so we are at a position this morning, your Honor, not of determining what is suitable bail under the circumstances but in determining whether the defendants have provided the kind of surety which is --

THE COURT: What you say the bail was fixed at a certain figure and that having been done there couldn't be any more consideration; if that figure is met that ends it.

MS. ROSNER: Not quite. It seems to me, Judge, we were a little off the track this morning in this regard. The Court seems unwilling to act on this particular application because of the pendency of the appeal and because of the lack of bail in state court. What I want to bring out to your Honor is this: The defendants have come forward with a prima facie case for having met the surety which has been required, some court has to sit down and look at the offer that has been made to determine whether that offer is sufficient to warrant release. Certainly, the Court of Appeals is not the appropriate body to do that, your Honor.

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THE COURT: Wait a minute. This Court has looked at the figures, looked at everything that has been submitted by Mr. Tigar. I said I complimented it because it's a very thorough job and it doesn't follow that the values in there are the actual values, but in all events, it's something, to begin with, and the Government require if it's going to pass on bail one way or the other and figure that that's it, the million dollars and nothing else, they would be required to see whether that figure was met by these evaluations.

MS. ROSNER: Precisely.

THE COURT: We went over that with Mr. Tigar.

MS. ROSNER: This is what I am suggesting. It is a difficult case because the amount of bail is so extremely high. With it a $100,000 bail the question of establishing compliance with the figure would be relatively easy, perhaps one or two pieces of property would be involved and a hearing would not be so onerous or so time-consuming as to in effect vitiate the rights of bail because the hearing itself would go on forever.

THE COURT: No, you could have a Magistrate's hearing if you want to on the values.

MS. ROSNER: This is what I am suggesting.

THE COURT: Or referee or someone could do that.

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MS. ROSNER: The defendants have done everything possible to demonstrate to the Court the accuracy and the good faith with which the collateral is provided. It is not sufficient, your Honor, for the Government to stand up and speculate that any individual has eggregiously or significantly erred in estimating the value of his property and defeat the defendant's efforts to comply with bail that cannot be enough.

THE COURT: I wouldn't pass on it under any circumstances. I made that clear as I possibly could. There will be no adjudication on the bail today or any other time until the Court of Appeals acts. Then I will ascertain whether the bail figure shall be retained at that figure, and whether it has been met in this court; otherwise, it goes up.

MS. ROSNER: I did not understand the Court to be saying that the Court was refusing to consider the issue of whether this collateral satisfies the bail condition as it exists; if that's the Court's position I most respectfully suggest that the Court is seriously in error.

THE COURT: You have suggested that a couple of times before in other cases.

MRS. ROSNER: Well, your Honor, let's not speak about the track record. What I am suggesting is that

there is a bail record; there is a bail figure set here. The District Court in the first instance must pass on the issue whether the collateral offered complies with the bail. If we go to the Court of Appeals they are going to remand --

THE COURT: I will not make the determination, Miss Rosner. I told you before I am going to leave that to the court that has the jurisdiction over the case.

MS. ROSNER: Then I have nothing further to add, your Honor.

THE COURT: Okay.

What do you have to say?

MR. ELEFANT: Your order is as to all five defendants?

THE COURT: Yes.

Mr. Tigar, if you want me to sign an order stating that I refuse to accept this as bail, that's one thing; on the other hand, I think from your own standpoint an order stating the Court refuses to determine it won't be too helpful. I don't think you want a blanket order.

MR. TIGAR: I think the best course would be to present to your Honor a one-line order of denial which we will do as soon as it can be prepared. We

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have ordered the transcript so that our contentions and your Honor's reasons are clear and will be clear to whatever the other court will be called to pass upon the question; that's the fairest way to deal with the question.

THE COURT: I will leave that to your judgment. I would say it will be a denial of the bail. I will have to have whereas clauses within the order.

MR. TIGAR: It is our intention, we want the Court of Appeals to be aware of our contention, of your Honor's position because I think that's fair to the Court, whose action is being review and we'll present the entire record that has been made on both our appearances here to the Court of Appeals. It's for that reason we think a very brief order will suffice.

THE COURT: I'll put whereas clauses in it.

MR. TIGAR: I understand.

THE COURT: Itwill be one page.

MR. PATTISON: Thank you, your Honor.

* * *

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

v. :

ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARC VLASIC, :

Defendants. :

ORDER

76-CR-602

WHEREAS the defendants have moved to dismiss two counts of the indictment, one of which alleges a capital offense, on the ground of lack of venue in this district, which motion was granted by this court; and

WHEREAS the government has appealed this decision to the court of appeals, which has not yet decided the appeal; and

WHEREAS bail has been fixed for each of the defendants above named at one million dollars apiece by Magistrate Chrein; and

WHEREAS the defendants have submitted an offer by members of the Croatian community to pledge properties estimated by the owners of said properties to have a net value of five million dollars; and

WHEREAS the above defendants move this court to release them from custody pending appeal and trial; and

WHEREAS on October 10, 1976, the defendants moved this court for a reduction of said bail which was denied for the reasons set forth in the record; and

WHEREAS the state court in which the defendants have been indicted for second degree murder for the death of a police officer arising out of the alleged air piracy covered by the indictment in this case has set no bail in the case; and

WHEREAS the court believes that the risk of non-appearance at trial is not the only risk to be weighed but in a case involving air piracy the danger to the community posed by the release of defendants must also be considered; and

WHEREAS this court also believes that it should not grant bail or decide motions involving bail until a decision is rendered by the court of appeals;

NOW, THEREFORE, it is hereby

ORDERED that the motion to release the above-named defendants from custody pending appeal and trial is under the circumstances denied.

Dated: Brooklyn, N.Y.,
December 20, 1976.

John R. Bartels
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,	:	76 Cr. 602 (JRB)
v.	:	NOTICE OF APPEAL
ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANJO PESUT, and MARC VLASIC, Defendants.	:	

Notice is hereby given that Zvonko Busic, Julienne Busic, Petar Matanic, Franjo Pesut, and Marc Vlasic, Defendants in the above entitled matter, hereby appeal to the United States Court of Appeals for the Second Circuit from the Order of the United States District Court for the Eastern District of New York denying their Motions for Release Pending Appeal and Trial entered in this action on the 20th day of December, 1976.

Dated: December 22, 1976

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